(20,315.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 350.

THE OLD DOMINION STEAMSHIP COMPANY, OWNER OF THE STEAMSHIP "HAMILTON," PETITIONER,

vs.

PRIMUS GILMORE, ADMINISTRATOR OF THE ESTATE OF ALFRED GILMORE, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the district court of the United States for the southern district of New York	1	1
Statement	1	1
Libel and petition	4	2
Order for appraisal	10	6
Commissioner's report on appraisal	12	7
Order fixing amount of stipulation for value	15	8
Order for monition	17	9
Monition	20	11
Answer of Clyde Steamship Company to libel and petition	22	12
Report of claims	26	14
Claim of Clyde Steamship Company (as bailee of cargo, baggage, and personal effects)	30	16
Claim of Clyde Steamship Company (for loss of S. S. *Saginaw*)	35	18
Claim of Primus Gilmore	38	20
Alvin Lee Joseph	40	21
Alvin Lee Joseph and Maggie E. Goslee	42	21
Answer of Alvin Lee Joseph	43	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APR 27, 1907.

	Original.	Print.
Claim of Sallie T. Morris	47	24
Order amending claim of Sallie T. Morris	49	25
Answer of Sallie T. Morris	53	27
Claim of Mary Anderson	57	28
Order allowing claim of Mary Anderson	59	29
Claim of Joseph Lawson	60	30
Order allowing claim of Joseph Lawson	65	32
Claim of Mary Swanson	66	33
Order allowing claim of Mary Swanson	70	35
Order allowing amendment of claim of Mary Swanson	72	35
Amended claim of Mary Swanson	73	36
Order adopting answer of Cole *et al.* as answer of Mary Swanson	77	38
Answer of Cole *et al.*	78	39
Deposition for the Old Dominion S. S. Co.	82	41
Testimony of Stokely Warrington	83	41
Depositions for the Clyde S. S. Co.	92	48
Testimony of James Jacobsen	93	48
James S. Tunnell	105	57
Cargo Exhibit 1—Diagram	140	82
Testimony of William S. Morris	141	83
Morris diagram	155	93
Testimony of Joseph N. J. Seltzer	156	93
J. S. Tunnell (recalled)	165	100
Opinion of Adams, J.	170	103
Interlocutory decree	182	110
Evidence before Henry W. Goodrich, commissioner	186	112
Testimony of Edward P. Greene	187	112
Stipulations and offers of evidence	189	114
Testimony of Joseph Lawson	194	117
Lucretia Stokes	200	120
Antonio Arguinchona	206	125
James Cooper	214	130
Nehemiah C. Bristow	221	135
Nehemiah C. Bristow	227	140
Lino Arginnochona	236	146
Mary Swanson	245	153
J. Homer Trevor	251	157
Ambrose Aman	252	157
Joseph Lawson	256	160
Joseph Lawson	259	163
Joseph Lawson	262	165
John L. Morris	265	167
Sally T. Morris	268	169
Susan Jones	273	172
Susan Jones	276	174
Mary Anderson	280	177
Charles D. Johnson	285	181
Primus Gilmore	288	183
Allen J. Stevens	292	186
Ambrose Aman	296	189
Alvin L. Joseph	300	191
Maggie E. Goslee	308	197
E. Paul Tunnell	311	200

	Original.	Print.
Testimony of David Roland	313	201
Norris Poyner	322	208
Offers of evidence, &c	324	210
Objection to claim of Mary Swanson	328	211
Joseph Lawson	329	212
Primus Gilmore	331	213
Sallie T. Morris	332	213
Mary Anderson	334	214
Alvin Lee Joseph	335	214
Commissioner's report	337	215
Exceptions to commissioner's report	352	223
Opinion of court modifying commissioner's report	360	227
Final decree	382	239
Petitioner's notice of appeal	391	243
Petitioner's assignments of error	392	244
Notice of appeal of claimant Primus Gilmore	396	246
Assignments of error of claimant Primus Gilmore	397	247
Notice of appeal of claimants Mary Swanson and Joseph Lawson	399	247
Assignments of error of claimants Mary Swanson and Joseph Lawson	400	248
Notice of appeal of claimant Mary Anderson	402	249
Assignments of error of claimant Mary Anderson	403	250
Notice of appeal of claimant Sallie T. Morris	405	250
Assignment of error of claimant Sallie T. Morris	406	251
Notice of appeal of claimants Alvin Lee Joseph and Maggie E. Goslee	408	252
Assignments of error of claimants Alvin Lee Joseph and Maggie E. Goslee	409	252
Stipulation as to record on appeal	411	253
Clerk's certificate to record on appeal	413	254
Order dismissing appeals of Hawley and Belknap	414	254
Opinion	417	256
Final decree	426	260
Clerk's certificate	428	261
Writ of certiorari	429	261
Stipulation as to return to writ of certiorari	432	262
Return to writ of certiorari	433	263

a United States Circuit Court of Appeals for the Second Circuit.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship "Hamilton" for Limitation of Liability, Petitioner-Appellant, PRIMUS GILMORE *et al.*, Claimants-Appellants.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship "Saginaw" for Limitation of Liability.

Transcript of Record.

Appeals from the District Court of the United States for the Southern District of New York.

Printed under the Direction of the Clerk.

[Stamp:] United States Circuit Court of Appeals, Second Circuit. Filed Feb. 24, 1906. William Parkin, clerk.

1 United States District Court.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for Limitation of Its Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship *Saginaw*, for Limitation of Its Liability.

Statement.

1903.
May 15 Petition filed
19 Order of appraisal entered
June 5 Commissioner's report filed
16 Order entered fixing amount of stipulation to be given
27 Order for monition entered

2

Oct. 5 Answer of Clyde Steamship Company filed
6 Report of claims filed
17 Answer of Sallie T. Morris filed
" " A. L. Joseph filed
20 " " E. B. Cole *et al.* filed
Supplemental report of claims filed
Nov. 27 Order and petition permitting Mary Swanson, as administratrix, etc., to file claim, entered and filed
Dec. 1 Supplemental report *re* claim of Mary Swanson
1904.
Mar. 23 Causes tried before Hon. George B. Adams

May 24 Order allowing Lawson to file claim entered
27 Claim of Lawson filed
Nov. 10 Order allowing Luther Hawley to file claim entered
28 Order allowing Maurice G. Belknap to file claim entered
Dec. 7 Opinion rendered. Decree for limitation of liability with reference to fix amount of damages

1905.

Jan. 31 Interlocutory decree entered
Order entered allowing claim of Mary Anderson, as administratrix, to be filed
Feb. 1 Claim of Mary Anderson, as administratrix, etc., filed
4 Objections to claims filed.
May 27 Order entered allowing amendment of claim of Sallie T. Morris to be filed
Amended claim of Sallie T. Morris filed

3

June 10 Commissioner's report filed
14 Exceptions to Commissioner's report filed
July 20 Order amending claim of Mary Swanson entered
Amended claim of Mary Swanson filed
Aug. 2 Decision rendered—Commissioner's report modified
10 Final decree entered
19 Petitioner's notice of appeal filed
Sept. 13 Notice of appeal of claimant Primus Gilmore filed
20 Notice of appeal of claimants Mary Swanson and Joseph Lawson filed
20 Assignments of error of claimants Mary Swanson and Joseph Lawson filed
26 Assignments of error of claimant Gilmore filed
30 Notice of appeal of claimant Mary Anderson filed
Assignments of error of claimant Mary Anderson filed
Notice of appeal of claimant Sallie T. Morris filed
Assignments of error of claimant Sallie T. Morris filed
Notice of appeal of claimants Alvin Lee Joseph and Maggie E. Goslee filed
Assignments of error of claimants Alvin Lee Joseph and Maggie E. Goslee filed
Oct. 2 Notice of appeal of Luther Hawley and Maurice G. Belknap filed
Assignments of error of claimants Luther Hawley and Maurice G. Belknap filed

4 To the Honorable the Judges of the District Court of the United States for the Southern District of New York.

The libel and petition of the Old Dominion Steamship Company, sole owner of the Steamship *Hamilton*, in a cause of limitation of liability, civil and maritime, respectfully shows and propounds by way of articles, upon information and belief:

First. The libellant herein is a corporation created under the laws of the State of Delaware, having offices in the City of New York

within this District, and at all times hereinafter mentioned was and now is the sole owner of the steamship *Hamilton*, which is a steel screw vessel, 300 feet long, 40 feet beam and 16.8 feet deep. She is enrolled at the Custom House in the City of New York, which is her home port. Until the collision hereinafter mentioned she was tight, staunch and seaworthy for ocean navigation.

Second. On Monday, the 4th of May, 1903, the *Hamilton* left New York bound for Norfolk, in charge of Captain Boaz with a full corps of officers and with a sufficient crew. At the time of leaving, the weather was fine with a smooth sea. During the night it came on foggy, and the *Hamilton* was navigated cautiously, running at moderate speed under one bell, and stopping from time to time to locate the sound of whistles forward of her beam.

At about twelve o'clock her speed was further reduced under special orders to the engine room, an automatic electric whistle was being blown at intervals of about 54 seconds, which was also continued (except when the steamer was stopped) until the collision hereinafter mentioned. The master was himself in the pilot house in charge of the navigation and lookouts were duly stationed forward on the *Hamilton's* bow and the master continued in charge until the collision.

Third. At about 4:41 A. M., when a little beyond Winter Quarter Light vessel, the fog being thick, the wind moderate from N. E., there was indistinctly heard a whistle on the starboard bow, whereupon the engines of the *Hamilton* were at once stopped. Soon after the whistle was repeated, sounding broader on the starboard bow, followed by the sight of a large steamer crossing the *Hamilton's* course heading to the eastward, and showing a red light. The *Hamilton's* engines were backed full speed and her helm put hard-a-port, but the other steamer (which was learned to be the *Saginaw*) came on until her port quarter was fouled by the *Hamilton's* bow after the *Hamilton's* way had nearly stopped. The *Hamilton* was herself damaged about the bow, but not below the water line. The *Hamilton* backed towards the *Saginaw*, promptly lowered her boats, but the *Saginaw* quickly sank stern first, leaving only her rigging above the water. The *Hamilton's* boats saved many of the officers, passengers and crew of the *Saginaw*.

Fourth. Said loss and damage were not caused or contributed to by those in charge of the *Hamilton*, but were due to the faults of those in charge of the *Saginaw*, in not sounding the signals required by law; in proceeding at an immoderate rate of speed in fog; in not having any competent officer in charge or any sufficient lookout; in not slowing, stopping and backing her engines when the whistles of the *Hamilton* were heard; in not keeping her proper course; in porting her helm and in not taking any timely or seasonable precautions to prevent the collision.

6 All of said losses and damages were done, occasioned and incurred without the privity or knowledge of this petitioner.

Fifth. Nevertheless, the Clyde Steamship Company, as owner of the *Saginaw*, and as bailee and trustee for the cargo and effects thereon exhibited in this Court on May 8th a libel against the

Hamilton, to recover $302,000 for the loss of said steamer and of the effects on board. The petitioner (to avoid the issue of process against the *Hamilton* which was then within the jurisdiction of this Court) entered into a written engagement to appear for the said vessel and to give a bond for her appraised value. According to the libellant's information and belief, there are also many claims for loss of life and personal effects of those who were lost on the *Saginaw,* which are liable to be made against this petitioner, but the amount thereof is not yet known. There are no unsatisfied liens, or claims, on contract arising on said voyage which terminated on May 5th by the *Hamilton's* arrival at Norfolk; that no demands in tort have yet been made, except in said libel by the Clyde Steamship Company, which is the only suit pending, wherein Messrs. Robinson, Biddle & Ward (79 Wall street) are the proctors.

Sixth. The petitioner further states that the value of the *Hamilton* in her damaged condition, after said collision, does not exceed the sum of Three hundred thousand dollars ($300,000); that the amount of freight moneys for the transportation of cargo on board was $2,764.33, and that the total passage money at the time of said collision amounted to $609.45, so that the entire and aggregate value of the interest of the petitioner in the said steamship,
7 and in her pending freight and passage moneys is insufficient to make compensation to each of the several claimants of damages, and others for the losses and destruction claimed to have been suffered by them.

Seventh. The petitioner desires to contest its liability as owner of the *Hamilton* for the loss, destruction, damage and injury occasioned by the collision aforesaid and also to claim the benefit of the limitation of liability provided in the third and fourth sections of the Act of March 3rd, 1851, entitled, "An Act to limit the liability of shipowners and for other purposes," now embodied in Sections 4283 to 4385 of the Revised Statutes of the United States, and the various statutes in addition thereto and amendatory thereof; and to that end is ready and willing to give a stipulation with sureties for the payment into Court of the amount of the value of this petitioner's interest in said steamship, whenever the same shall be ordered, under the provisions of General Rule 54 in Admiralty.

Eighth. The petitioner further states that the facts and circumstances by reason of which exemption from liability is claimed are as follows, in addition to the facts hereinbefore alleged; this libellant had exercised due diligence to make the steamship *Hamilton* in all respects seaworthy and properly manned, equipped and supplied and had entrusted the navigation thereof to a master of long experience and tried competency; that the collision was rendered unavoidable by the change of course on the part of the *Saginaw.*

Ninth. The *Hamilton* has been libelled in this District as hereinbefore set forth, and the *Hamilton* is now within the
8 waters of New York and within this District and the jurisdiction of this Honorable Court.

Tenth. All and singular the premises are true and within the

admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the petitioner prays that this Court will cause due appraisement to be had of the value of the petitioner's interest in the steamship *Hamilton* and in its freight and passage moneys, and that this petitioner may be authorized and directed to give a stipulation with sureties for the payment of the amount thereof into Court, whenever the same shall be ordered; and that upon the giving of such stipulation that this Court will thereupon issue a monition against all persons claiming damages for any loss, destruction, damage or injury occasioned by said disaster, citing them to appear before this Court and make due proof of their respective claims at a time to be therein named, as to all which claims your petitioner will contest his liability independently of the limitation of liability claimed under the Act and Statute aforesaid. Also that the Court will designate a Commissioner before whom proof of all claims presented in pursuance of the monition shall be made, and that upon the coming in of the report of said Commissioner and upon the hearing of the cause, if it shall appear that the petitioner is not liable for such loss, damage, destruction and injury, it may so finally be decreed by this Court. And in the meantime and until the final judgment of the Court shall be rendered herein, this Court may make an order restraining the further prosecution of all and any suit or suits against the petitioner, in respect of any such claim or claims.

9 And your petitioner will ever pray, etc.

OLD DOMINION STEAMSHIP CO.,
By J. S. SAMMIS, *Treas.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Sammis, being duly sworn, says he is the Treasurer of the Old Dominion Steamship Company, the libellant herein; that he has read the foregoing libel subscribed by him, and that the same is true to the best of his knowledge, information and belief. That the sources of his information and the grounds of his belief are the reports and statements of the officers of the *Hamilton* made to the executive officers of the Old Dominion Steamship Company.

J. S. SAMMIS.

Sworn to before me this 13th day of May, 1903.

HENRY E. MATTISON,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

[Endorsed:] Petition.—Filed May 15, 1903.

10 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, in the City of New York, Borough of Manhattan, on the 19th day of May, 1903.

Present: Hon. George B. Adams, District Judge.

In the Matter of The Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability as Owners of the Steamship *Hamilton.*

On reading the libel and petition herein of the above-named Old Dominion Steamship Company, praying for limitation of its liability as owner of the steamship *Hamilton,* and after hearing Messrs. Robinson, Biddle & Ward, proctors for the steamship *Saginaw,* with the affidavit of H. Putnam, sworn to May 19th, 1903, and on motion of Wing, Putnam & Burlingham, proctors for the petitioner, it is

Ordered that Henry W. Goodrich, Esq., be and he hereby is appointed appraiser to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship *Hamilton* and in her freight for the voyage in the petition mentioned. And it is further

11 Ordered that four days' notice of the proceedings to appraise the *Hamilton* be given to the proctors for the Clyde Steamship Company, Messrs. Robinson, Biddle & Ward.

Also that ten days' written notice of such proceedings to appraise the *Hamilton* be given by mail by delivering the same in a post-paid wrapper sealed, in the General Post Office in the City of New York, addressed to the surviving passengers of the *Saginaw,* as follows:—

Morris Payner,
S. Journigan,
David Rolland,
John Reese,
Willie Pinner,
Judson Sibiels,
} Care of S. Brandt, Esq.,
Atty. at Law, Norfolk, Va.

Mary Sanderlin, Windsor, N. C.
R. B. Longhead, Chester, Penn.
H. F. Winters, Camden, N. J.
E. B. Coles, 4624 Hedge St., Frankfort, Philadelphia, Penn.
George B. Hood, 148 North 2nd St., Philadelphia, Penn.
J. H. Trevor, 2212 North Water St., Philadelphia, Penn.

Ordered that upon the filing of the report of the said appraiser, the petitioner do pay the sum so reported into the Registry of this Court, or do give a stipulation, with sufficient sureties, for the payment thereof into Court whenever the same shall be ordered.

GEORGE B. ADAMS.

Notice of settlement waived.

ROBINSON, BIDDLE & WARD,
Proctors for Clyde S. S. Co.

May 19th, 1903.

[Endorsed:] Order for Appraisal.—Entered May 19, 1903.

12 United States District Court, Southern District of New York.

In the Matter of the Petition of OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability, &c.

Commission-r's Report on Appraisal.

In pursuance of an order of this Court, dated May 19th, 1903, whereby it was referred to the undersigned, one of the Commissioners of this Court, as appraiser, to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship *Hamilton* and in her freight for the voyage in the petition mentioned, I, Henry W. Goodrich, do hereby report as follows:—

I have been attended by the proctors for the petitioner and for the Clyde Steamship Company, owner of the steamship *Saginaw*.

The hearing was held before me on the second day of June, 1903, and notice thereof was given by mail to the persons named in the order, as is shown by the affidavit of George R. Coughlan, marked Schedule "A;" a copy of the notice is set out in the minutes and the various Schedules herein mentioned are attached thereto.

13 In pursuance of such notice, I have received communications from E. B. Cole, marked Schedule "B," from R. B. Longhead, marked Schedule "C," and from L. C. Grogan, in behalf of Mary A. Sanderlin, marked Schedule "D." Admission of the service of the notice upon Messrs. Robinson, Biddle & Ward, proctors for the steamship *Saginaw* was also presented to me, marked Schedule "E." No further communications have been received by me from any of the persons named in the order, nor did any such persons appear before me.

The *Hamilton*, together with another steamer for the service of the petitioner, came into its service in April, 1899, a new ship. Her cost as delivered from the builders, was $375,000; the sum of $25,048 was expended by the petitioners, for fittings of the vessel, so that the cost of the *Hamilton* in April, 1899, was the sum of $400,048.

The petitioner proved by three witnesses, two of them unconnected with it, that the sound value of the steamer on May 5, 1903, was the sum of $320,000. All of these witnesses took as a basis the cost of the steamer, and allowed a certain amount for depreciation year by year. It was shown that beginning on July 1st, 1901, petitioner adopted the system of writing-off a certain percentage of the values of their vessels year by year for depreciation, but that this was not done in 1900. The sound value of the vessel, as shown by the petitioner's books on July 1st, 1901, was $381,503.05; her sound value of July 1st, 1902, was $358,6-.87, and it was the intention of the Company to write off a further six per cent. together with the cost of certain repairs, on the first of July, 1903. This would make the sound value, according to the petitioner's calculation, about

14 $320,000, a valuation also fixed by two disinterested witnesses, who base their estimate, one upon book value less present repairs, and the other upon cost, making

allowance for depreciation. In my judgment the fact that the petitioner's book valuation as of July 1st next on the basis of 6% depreciation would exceed $320,000, should not be conclusive, especially in view of Mr. Walker's testimony that the Company would also deduct the cost of the extraordinary repairs now making.

I therefore find that the sound value of the *Hamilton* at the time of her collision, May 5, 1903, was $320,000.00
from which I deduct the cost of repairs and demurrage 5,000.00

making the value of the vessel itself after the collision $315,000.00
To which add pending freight 2,764.33
Passage money 609.45

Making the total value of the interest of the petitioner in the vessel and her pending freight $318,373.78

All of which is respectfully submitted.

(S'g'd) HENRY W. GOODRICH,
Commissioner.

Dated, New York, June 4, 1903.

[Endorsed:] Commissioner's Report on Appraisal.—Filed June 5, 1903.

15 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, Borough of Manhattan, City of New York, on the 16th day of June, 1903.

Present: Hon. George B. Adams, District Judge.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability, as Owners of the Steamship *Hamilton*.

On reading and filing the report of Henry W. Goodrich, Esq., to whom it was referred to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship *Hamilton* and in her freight for the voyage in the petition mentioned, and due notice of said appraisal, pursuant to an order of this Court, dated May 19th, 1903, having been given to the persons named in said order, and the value of the interest of said petitioner having been reported to be the sum of Three hundred and eighteen thousand three hundred and seventy-three and 78/100 dollars ($318,373.78); and the time to file exceptions to said report having expired, and no exceptions having been filed, now on motion of Wing, Putnam & Burlingham, proctors for the petitioner, it is

Ordered that the petitioner, the Old Dominion Steamship
16 Company, pay the sum of Three hundred and eighteen thousand three hundred and seventy-three and 78/100 dollars

($318,373.78) into the Registry of this Court, or give a stipulation, with sufficient sureties, for the payment thereof into Court whenever the same shall be ordered.

GEO. B. ADAMS, *U. S. D. J.*

Notice of settlement of the foregoing order is hereby waived.

ROBINSON, BIDDLE & WARD,
Proctors for Clyde SS. Co.

Dated New York, June 15th, 1903.

[Endorsed:] Order fixing amount of stipulation entered June 16, 1905.

17 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 24th day of June, 1903.

Present: Hon. George B. Adams, District Judge.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability, as Owners of the Steamship *Hamilton*.

On reading the libel and petition herein of the above named Old Dominion Steamship Company, praying for limitation of its liability as owner of the steamship *Hamilton* for collision with the steamship *Saginaw* on May 5, 1903, and it appearing that theretofore the steamship *Hamilton* had been libelled in this Court by the Clyde Steamship Company, owner of the steamship *Saginaw*, for damages resulting from said collision; and an order having been entered herein on the 19th day of May, 1903, whereby Henry W. Goodrich, Esq., was appointed to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship *Hamilton* and in her freight for the voyage in the petition mentioned, and due notice of the proceedings to appraise the

18 said steamship *Hamilton* having been given, and said appraisal having been duly had and said appraiser having duly filed his report herein, dated June 4, 1903, wherein he finds the value of the interest of the petitioner in the said steamship *Hamilton* and her pending freight to be the sum of Three hundred and eighteen thousand three hundred and seventy-three and 78/100 ($318,373.78) dollars, and no exceptions to said report having been filed and said report having been confirmed, and an order of this Court, dated June 16th, 1903, having been made and entered herein, directing said petitioner to pay the sum of three hundred and eighteen thousand three hundred and seventy-three and 78/100 ($318;373.78) dollars into the Registry of this Court, or to give a stipulation with sufficient sureties for the payment thereof into Court whenever the same shall be ordered, and said petitioner having

filed in the office of the Clerk of the Court a stipulation in the sum aforesaid with the American Surety Company of New York, as surety, which stipulation has been duly approved by this Court:

Now, on motion of Wing, Putnam & Burlington, proctors for said petitioner, it is

Ordered, that a monition issue out of and under the seal of this Court against all persons claiming damages for any and all loss, destruction, damage or injury caused by or resulting from the collision set forth in the said libel and petition herein and occurring between the said steamship *Hamilton* and the steamship *Saginaw*, citing them and each of them to appear before the Court and make due proof of their respective claims, on or before the 6th day of October, 1903, at 10:30 o'clock a. m. of that day, and Thos.
19 Alexander, Esq., is hereby appointed Commissioner before whom proof of all claims which may be presented pursuant to said monition shall be made; subject to the right of any person or persons interested to controvert or question the same; and it is further

Ordered, that public notice of said monition be given by publication thereof in *The Mail and Express*, a newspaper published in the City of New York, once a day for fourteen days, and thereafter once a week until the return day of said monition, and that the first publication of said monition be at least three months before said return day. And it is further

Ordered, that a copy of said monition and of this order be served at least thirty days before the said return day of said monition upon the following proctors and attorneys for parties claiming damages by reason of the said collision in said libel and petition set forth:

Messrs. Robinson, Biddle & Ward, Proctors for The Clyde Steamship Company.

Messrs. Butler, Notman, Joline & Mynderse, Proctors for certain owners of cargo on S. S. *Saginaw*.

Messrs. Hunt, Hill & Betts, Proctors for John H. Trevor.

S. Brandt, Esq., Proctor for Morris Payner, S. Journigan, David Rolland, John Reese, Willie Pinner and Judson Siebels.

Francis D. Winton, Winston, North Carolina, Proctor or attorney for Elijah Jones Estate.

And it is further

Ordered, that the further prosecution of the aforesaid libel
20 in this Court by the Clyde Steamship Company against the steamship *Hamilton*, &c., and the prosecution of any and all other libels, suits, actions and proceedings of any nature or description against the said steamship *Hamilton* or the said Old Dominion Steamship Company in respect of any claim for damages for loss, destruction, damage or injury on account of said collision on May 5th, 1903, between the said steamship *Hamilton* and the said steamship *Saginaw*, be, and the same hereby is, restrained; and it is further

Ordered, that the service of this order as a restraining order be made within this the Southern District of New York, in the usual

manner, and in any other District of the United States by the Marshal of the United States for such District delivering a certified copy of this order to the person or persons to be restrained, or their attorneys or proctors acting in their behalf.

GEO. B. ADAMS, *U. S. D. J.*

[Endorsed:] Order for Monition.—Entered June 27, 1903.

Monition.

The President of the United States of America to the Marshal of the United States for the Southern District of New York, Greeting:

Whereas, a libel and petition were filed in the District Court of the United States for the Southern District of New York, on the 15th day of May, 1903, by the Old Dominion Steamship
21 Company, as owner of the steamship *Hamilton,* her engines, boilers, &c., and her prepaid freight and passage moneys, praying for a limitation of its liability concerning the loss, damage or injury occasioned by the collision between said steamship *Hamilton* and the steamship *Saginaw,* on or about the 5th day of May, 1903, for the reasons and causes in said libel and petition mentioned, and praying that a monition of the said Court in that behalf be issued, and that all persons claiming damages for any such loss, damage or injury may be thereby cited to appear before the said Court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that the said petitioners are not liable for any such loss, damage or injury, it may be so finally decreed by this Court;

And whereas, the value of the interest of the said owner in the steamship *Hamilton,* and her freight then pending and her passage moneys has been appraised at the sum of three hundred and eighteen thousand three hundred and seventy-three and 78/100 ($318,373.78) dollars and a stipulation for said appraised value, duly approved, has been filed in this Court, and the said Court has ordered that a monition issue against all persons claiming damage for any loss, damage or injury by said collision, citing them to appear and make due proof of their respective claims;

You are, therefore, commanded to cite all persons claiming damages for any loss, damage or injury occasioned by said collision to appear before said Court and make due proof of their respective claims, before Thos. Alexander, Esq., a United States Commissioner, at his office, in the United States Court and P. O. Building, in the Borough of Manhattan, City of New York, on or before the 6th day of October, 1903, at 10.30 o'clock in the forenoon, and
22 you are also commanded to cite such claimants to appear and answer the allegations of the libel and petition herein, on or before said last named date, or within such further time as this Court may grant, and to have and receive such relief as may be due.

And what you have done in the premises, do you then make return to this Court, together with this writ.

Witness the Honorable George B. Adams and the Honorable George C. Holt, Judges of the District Court of the United States for the Southern District of New York, this 27th day of June, 1903, and of the Independence of the United States the one hundred and twenty-seventh.

[SEAL.] THOS. ALEXANDER, *Clerk.*

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of the Clyde Steamship Company, sole owner of the steamship *Saginaw,* on its own behalf as owner of said *Saginaw,* and as bailee of such of the cargo lately laden thereon as to which it has filed a claim herein, and also as bailee of the baggage and effects of the passengers and crew lately upon said steamer; to the libel and petition of the Old Dominion Steamship Company, as sole owner of the steamship *Hamilton,* in a cause of Limitation of Liability, civil and maritime, respectfully shows:

23 *First.* The claimant and respondent admits the allegations contained in the first article of the libel.

Second. The claimant and respondent denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the second article of the libel, and leaves the libellant to make such proof thereof as it may be advised.

Third. The claimant and respondent denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the third article of the libel, and leaves the libellant to make such proof thereof as it may be advised, except that the respondent denies that at the time of the collision the *Hamilton's* way had nearly stopped, and avers on the contrary that at the time of the collision the *Hamilton* was going at an undue and immoderate rate of speed; but it admits that the *Hamilton* lowered her boats and saved some of the officers, passengers and crew of the *Saginaw,* and that the *Saginaw* quickly sank, stern first.

Fourth. The claimant and respondent denies the allegations contained in the fourth article of the libel, except that the losses and damages were occasioned without the privity or knowledge of the libellant, and avers on the contrary that the collision and the damages consequent thereon were due to the lack of care and skill of those in charge of the navigation of the steamship *Hamilton* in the following among other particulars:

1st. In not blowing the signals required by law;

2nd. In not proceeding at a moderate rate of speed in the fog;

3d. In not having any, or any competent lookout;

24 4th. In having a defective reversing gear;

5th. In not stopping and backing the engines seasonably before the collision;

6th. In not taking any timely or seasonable precautions to avoid the collision.

Fifth. The claimant and respondent admits the allegations contained in the fifth article of the libel.

Sixth. The claimant and respondent denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the sixth article of the libel.

Seventh. The claimant and respondent admits the allegations contained in the seventh article of the libel.

Eighth. The claimant and respondent denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the eighth article of the libel, exc-pt that it denies the allegation that the collision was rendered unavoidable by the change of course on the part of the *Saginaw*.

Ninth. The claimant and respondent admits the allegations contained in the ninth article of the libel.

Tenth. The claimant and respondent denies the allegations contained in the tenth article of the libel, except as to the jurisdiction of the court.

Eleventh. As a result of the collision mentioned in the libel
25 the steamer *Saginaw*, of a value of $90,000, as also the cargo and the baggage, and effects of the crew and passengers, became a total loss. That the value of the cargo, baggage and effects represented by this respondent as bailee is, as nearly as can now be ascertained, $——

Wherefore, the claimant and respondent prays that the libellant may be held liable for the damages sustained by the respondent and claimant in consequence of the collision mentioned in the libel, and that this Honorable Court will be pleased to direct payment to the respondent and claimant of its said damages, or of so much of its said damages as it may be entitled to receive out of any stipulation given by the libellant for the value of the steamship *Hamilton* and her pending freight.

ROBINSON, BIDDLE & WARD,
Proctors for Clyde Steamship Co.

STATE OF NEW YORK,
Southern District of New York, ss:

Clyde Milne, being duly sworn, doth depose and say, that he is the assistant secretary of the Clyde Steamship Company, the claimant and respondent in the above entitled action. That the foregoing claim and answer are true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the grounds of his belief as to all matters not therein stated upon his knowledge are based upon reports of the officers and crew of the steamship *Saginaw*, with respect to the subject matter of this suit, and that the reason why this verification is made by the
26 deponent is that the claimant and respondent is a foreign corporation created and existing under and by virtue of the laws of the State of Delaware.

CLYDE MILNE.

Sworn to and subscribed before me this 2d day of October, 1903.

C. C. HELM,
Notary Public.

[SEAL NOTARY PUBLIC.]

[Endorsed:] Answer of Clyde Steamship Company, filed October 5, 1905.

United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton* for a Limitation of Liability.

To the District Court of the United States for the Southern District of New York:

I, Thomas Alexander, the Commissioner named in the order of the Court made and entered in this proceeding and bearing date
27 the 27th day of June, 1903, and before whom the claims of all persons for any and all loss, destruction, damage or injury caused by or resulting from the collision set forth in the libel and petition herein, were required to be presented on or before the 6th day of October, 1903, do respectfully report that three classes of claims have been presented to me viz.:

1. Claims for damages resulting from death.
2. Claims for personal injuries and loss of personal effects.
3. Claims for loss of and damage to property.

Of the first class, for damages resulting from death, I have received four claims, viz.:

That of S. B. Kenney, administrator, etc., of the estate of Mary Eliza Jones, for damages resulting from the death of the said Mary Eliza Jones.....	$2,749.00
That of Primus Gilmore, administrator of the estate of Alfred Gilmore, deceased, for damages resulting from the death of Alfred Gilmore.....	10,200.00
That of Alvin Lee Joseph, as executor etc. of the last will and testament of Edward S. Goslee, deceased, for damages resulting from the death of said Edward S. Goslee	20,000.00
That of Sallie T. Morris, as executor of the estate of William Morris, deceased, for damages resulting from the death of said William Morris.....	15,000.00
Making a total of.....	$47,949.00

Of the second class claims for personal injuries and loss of personal effects, I have received seven claims, viz.:

28	That of John H. Trevor	$100,000.00
	That of Henry F. Winters, Jr.	5,000.00
	That of George B. Hood	5,000.00
	That of David Rolland	1,263.00
	That of Judson Sivills	462.25
	That of Willie Pinner	494.50
	That of Edward B. Cole	5,700.00
	Making a total of	$27,919.75

Of the third class, claims for loss of and damage to property, I have received 18 claims, viz.:

That of S. Moskovitz &, Co	$46.51
That of Max Schaffer and Philip Schaffer, doing business as the Eagle Skirt & Suit Manufacturing Co	167.86
That of Roxboro Cotton Mills	534.57
That of Durham Cotton Manufacturing Co	5,527.14
That of S. Jernigan	52.50
That of Norris Poyner	280.25
That of John Reese	103.00
That of R. B. Loughead	93.00
That of the Clyde Steamship Co., as bailee of cargo and of baggage and personal effects of passengers	24,328.82
That of the Clyde Steamship Co. for loss of the steamship *Saginaw*	90,000.00

And also for all damages which may be sustained by reason of the allowance and adjudication of claims against it by reason of the collision set forth in the libel herein.

	That of the General Marine Insurance Co., for damages paid under insurance policies	$4,550.00
29	That of the British and Foreign Marine Insurance Co., L't'd, for damages under insurance policies	66,094.40
	That of the St. Paul Fire and Marine Insurance Co. for damages paid under insurance policies	4,545.72
	That of the British American Assurance Co. for damages paid under insurance policies	6,818.60
	That of the Aetna Insurance Co. for damages paid under insurance policies	9,091.47
	That of the Atlantic Mutual Insurance Co. for damages paid under insurance policies	259.00
	Making a total of	$213,800.64

That the said claims are hereto annexed and constitute a portion of this report.

That no other claims have been presented to me.

All of which is respectfully submitted.

Dated New York, October 6, 1903.

(Signed) THOS. ALEXANDER,
U. S. Commissioner.

[Endorsed:] Report of Claims—Filed October 6, 1903.

30 District Court of the United States, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship "Hamilton," for a Limitation of Liability.

And now comes the Clyde Steamship Company in the above matter, and as bailee of the cargo and of the baggage and personal effects of the passengers and crew of the steamship *Saginaw* makes claim against the above named Old Dominion Steamship Company, and the said steamship *Hamilton*, as follows:

The Clyde Steamship Company is a corporation created by and existing under the laws of the State of Delaware, and was lately the owner of the steamship *Saginaw*, her engines, etc., which steamship was on the 5th day of May, 1903, and while owned by this claimant, on a voyage from Norfolk, Virginia, to Philadelphia, Pennsylvania; and on said date, and on the high seas, and not far from the Winter Quarter Lightship, and at about 4.45 A. M., came in collision with the above named steamship *Hamilton*, as the result whereof
31 the said steamship *Saginaw* sank and was totally lost, together with her said cargo and the baggage and effects of the passengers and crew of said *Saginaw*.

That said collision was caused by and contributed to by the fault and negligence of those in charge of the said steamship *Hamilton*.

That said Clyde Steamship Company was at the time of said sinking, the bailee of and lawfully in possession as such bailee of the cargo laden upon said *Saginaw* and of the baggage of the passengers and the effects of the crew of said *Saginaw;* and that, therefore, for such of the cargo, baggage and effects as to the knowledge of said Clyde Steamship Company are not otherwise represented in the above entitled proceeding of the Clyde Steamship Company makes claim as first above set forth, and for the following items of loss:

Cargo Owner, Items.	*Amount.*
Cone Export & Commission Company, 2 bales Domestics	$131.28
West Hill Co., 2 crates Eggs	43.75
Willard Mnfg. Co., 28 tubes Cotton Rope	87.94
J. Spencer Turner Co., 7 bales Cotton Warps	404.25
Greensboro Table & Mantel Company, Furniture	78.30
May D. Carter, 1 box Hats	14.55
Treacy, Morris & Co., 1 box Clothing	104.00
J. H. Parvin & Co., 41 bales and 13 cases Yarn	4,124.75
American Press Ass'n, 5 boxes Old Type	6.78
Jas. E. Mitchell & Co., 22 bales and 12 cases Yarn	2,203.52
Shields Bros., 14 bales Cotton Rope	288.21
Rumsey Electrical Co., 2 boxes Electrical goods	50.00
32 Yarboro House, Raleigh, N. C., 1 box Hardware, 2 empty Oil Cans, 1 can Oil and 1 Keg Paint	75.04
Monroe Bros. & Co., 1 box Shoes	41.85

George W. Chapin, 3 bales Cotton Yarns	169.68
Joel Bailey-Davis Co., 2 cases Overalls, 1 box Notions	201.12
Henry Troemner, 1 box Hardware	18.75
W. M. & F. W. Sharples, 5 bales Cotton Yarn	289.85
Travora Manufacturing Co., 25 cases Yarn	572.66
Odell Manufacturing Co., 10 cases Cotton Goods	1,168.03
M. Kohn & Son, 2 cases Cotton Fabrics	351.84
W. H. & J. R. Glass, 1 barrel Peas	11.36
Atherton Cotton Mills, 2 bales Cotton Yarn	142.56
Harriett Cotton Mills, 21 cases Yarn	1,160.95
Saxapahaw Cotton Mills, 7 bales Cotton Yarn	434.00
T. A. Bidgood, 28 barrels Cabbage	47.60
Magnolia Mills, 2 cases Cotton Yarn	183.59
Littleton Hosiery Mills, 2 bags Hosiery	106.40
C. M. Allen Company, 1 box Dry Goods	10.21
Sterling Cotton Mills, 6 bales Cotton Warps	278.46
Fayetteville Gas & Elec. Light Co., 1 meter (boxed)	11.55
Tennessee Line & Twine Co., 5 bales Cotton Twine	95.00
Wilmot D. Porcher, 47 pockets Rice, 10 barrels Rice	454.58
Garrett & Co., 2 bbls. bot'd Wine	38.33
Littleton Hosiery Mills, 5 bags Cotton Waste	32.04
Cone Export & Commission Co., 3 packages	342.70
33 American Chemical & Textile Coloring Co., 1 case Yarn	157.95
Taylor Bros. & Co., 9 crates Berries	64.80
Carbon Dioxide & Magnesia Co., 8 empty Gas Tubes	130.00
Dry-Heath-Miller Co., 9 bales Cotton Yarn	486.00
Ocala Mattress Mfg. Co., 11 bales Moss	68.25
O'Neill & McSweeney, 17 bales Cotton Rags	180.54
Worth Manufacturing Co., 25 bales Cotton Warps	1,204.53
Lawrence, McFadden & Elliott, Lmtd., 1 bbl. Wood Filler	28.98
Bergner & Engle Brewing Co., 11 bbls. mt. Bottles	28.75
Geo. W. Reeves, 10 bbls. Pine Tar	18.50
J. H. Zeilin & Co., 1 box Drugs	13.88
Dennison Manufacturing Co., 1 box Paper	1.69
Akron Smoking Pipe Co., 75 boxes C. C. pipes	37.50
Dunlap, Slack & Co., 20 bbls. Pine Tar	41.00
Eno Cotton Mills, 12 bales Cotton Yarn	901.52
W. B. Carney, 15 bbls. Cabbage, 6 crates Strawberries	52.53
E. M. Bruce, 20 bbls. Cabbage, 4 crates Strawberries	45.72
J. V. Carney, 5 crates Strawberries	30.40
Carney & Carney, 10 crates Strawberries	60.80
Total	$17,328.82

And on information and belief the said Clyde Steamship Company shows that as far as it can ascertain at present the value of other cargo, the particulars of which are not yet known to it, which cargo

was lost as aforesaid and of which it was the bailee, amounts
34 to the sum of $5,000.00.

And on like information and belief the Clyde Steamship Company shows that the value of the baggage of passengers and effects of the crew so as aforesaid in its possession as bailee at the time of said sinking, amounts to the sum of $2,000.00.

Wherefore the said Clyde Steamship Company as bailee as aforesaid presents its claim for the aggregate amount of $24,328.82 with lawful interest thereon.

ROBINSON, BIDDLE & WARD,
Proctors for Clyde Steamship Company, Bailee.

To Thomas Alexander, Esq., Commissioner.
Messrs. Wing, Putnam & Burlingham,
Proctors for Old Dominion Steamship Co.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Clyde Milne being duly sworn says, that he is the Assistant Secretary of the Clyde Steamship Company, the claimant named in the foregoing claim; that he has read the said claim and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. That the reason why this verification is not made by the Clyde Steamship Company is that the same is a corporation created by and existing under the laws of the State of Delaware, and that this deponent is an officer thereof as above set forth.

CLYDE MILNE.

35 Sworn to before me this 2d day of October, 1903.
[SEAL.] C. C. HELM,
Notary Public.

[Endorsed:] Claim of Clyde Steamship Company *vs.* bailee of cargo, etc., filed October 5, 1903.

District Court of the United States, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability, as Owners of the Steamship *Hamilton*.

And now comes the Clyde Steamship Company in the above matter and makes claim against the above named Old Dominion Steamship Company and the said steamship *Hamilton*, as follows:

The Clyde Steamship Company is a corporation created by and existing under the laws of the State of Delaware and was lately the owner of the steamship *Saginaw*, her engines, etc.

36 That on the 5th day of May, 1903, the said steamship *Saginaw* was on a voyage from Norfolk, Va., to Philadelphia,

Pa., and on said date and on the high seas, and not far from the Winter Quarter Lightship, and at about 4.45 A. M., she came in collision with the above named steamship *Hamilton*, as the result of which collision the said steamship *Saginaw* sank and was totally lost, with great loss of life and property.

That said collision was caused by and contributed to by the fault and negligence of those in charge of the said steamship *Hamilton*.

That by reason of the sinking and total loss of said steamship *Saginaw*, her engines, etc., the Clyde Steamship Company has sustained damages in the sum of $90,000.

That sundry suits have been begun, and numerous claims made, against the Clyde Steamship Company for damages sustained through loss of life, personal injuries and loss of cargo by reason of the sinking of said steamship *Saginaw*. It is not now possible, and will not be possible before the legal adjudication thereof to state the amount of such claims allowed or proved against the said Clyde Steamship Company; but said Clyde Steamship Company makes further claim in addition to their damages for the loss of their steamship *Saginaw* and makes such claim against the Old Dominion Steamship Company and said steamship *Hamilton* for all such sums as may be adjudged or allowed against them, and hereby gives notice of its intent to hold the steamship *Hamilton* and the Old Dominion Steamship Company responsible for all damages which it may sustain by reason of such allowance and adjudication of claims against it, and for all moneys which it may be called upon to pay to other
37 persons or corporations for loss or injuries arising from said collision and consequent sinking of said *Saginaw*.

THE CLYDE STEAMSHIP CO.,
By THOS. CLYDE, *Secretary*.

Dated New York City, Sept. 21, 1903.

COUNTY OF NEW YORK,
Southern District of New York, ss:

Thos. Clyde, being duly sworn, says: That he is the Secretary of the Clyde Steamship Company, the claimant herein. That he has read the foregoing claim and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true. That the reason why this verification is not made by the Clyde Steamship Company is that the same is a corporation created by and existing under the laws of the State of Delaware, and that this deponent is an officer thereof as above set forth.

THOS. CLYDE.

Sworn to before me this 21st day of September, 1903.
[SEAL.]
JAMES A. HEALY,
Notary Public, No. 57, *N. Y. Co.*

[Endorsed:] Claim of Clyde Steamship Company for loss of S. S. *Saginaw*—filed October 5, 1903.

38 United States District Court, Southern District of New York.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY, as Owners of the Steamship *Hamilton*, Her Engines and Boilers, etc., to Limit its Liability Thereon.

UNITED STATES OF AMERICA,
Eastern District of North Carolina, ss:

Primus Gilmore, being duly sworn, deposes and alleges as follows:

1. That he is administrator, etc., and that letters of administration on the goods, chattels and effects of Alfred Gilmore, deceased, were duly issued to him by A. A. McKethan, C. S. C., of Cumberland County, in the State of North Carolina, May 26, 1903, that he has duly qualified as such administrator and that said letters of administration are still valid, in full force, etc.

2. That as claimant is informed and believes, the said Alfred Gilmore, on or about the third day of May, 1903, took passage on the steamship *Saginaw*, the vessel belonging to the Clyde S. S. Co. under a contract with the said Clyde Steamship Company, to be safely transported together with the property belonging to him, to the value of Two Hundred Dollars ($200.00) from Norfolk,
39 Virginia, to New York; that while on said voyage, the said steamship *Saginaw* came into collision with the steamship *Hamilton* through no fault of the claimant or the said Alfred Gilmore by reason of which collision the said steamship *Saginaw* shortly afterwards sank and the said Alfred Gilmore was drowned, and his entire personal property on board the said steamship was lost.

3. This claimant as administrator of the estate of the said Alfred Gilmore, by reason of the premises hereby makes and files his claim against the said petitioner for the sum of Two Hundred Dollars ($200.00), the value of the personal property of claimant lost in said collision and for the further sum of Ten Thousand Dollars ($10,000) damages sustained by the estate of the said Alfred Gilmore by his death, no part of either of which sums has ever been paid, and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sums are due to this claimant and should be allowed to him out of the fund deposited in the Registry of the Court in these proceedings.

His
PRIMUS x GILMORE,
mark
(*Admr. of Alfred Gilmore.*)

Witnesses:
H. McD. ROBINSON,
M. C. DOWNING.

Sworn and subscribed to before me, a Notary Public in and for the County of Cumberland, State of North Carolina, on this 18th day of September, 1903.

[NOTARIAL SEAL.] HENRY McD. ROBINSON,
Notary Public.

[Endorsed:] Claim of Primus Gilmore—filed September, 1903.

40 United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of THE OLD DOMINION STEAMSHIP CO., Owner of the S. S. Hamilton, for a Limitation of Liability.

DISTRICT OF DELAWARE, *State of Delaware, County of Sussex, ss:*

Alvin Lee Joseph, being duly sworn, says: I am a resident of Trinity, Sussex County, Delaware, and the executor of the last will and testament of Edward S. Goslee.

On May 4th, 1903, the said Edward S. Goslee, then a resident of Sussex County, Delaware, was chief officer on the S. S. *Saginaw,* at the time of her collision with the S. S. *Hamilton,* set forth in the libel and petition. By reason of the said collision, and as I am informed and believe, through the fault of the said petitioner, the Old Dominion Steamship Co., or its servants or agents in charge of the S. S. *Hamilton,* and without fault on his part, the said Edward S. Goslee was injured and killed.

I have duly qualified as the executor of the last will and testament of the said Edward S. Goslee and have been granted
41 letters testamentary. Under and by virtue of the statute of the State of Delaware in such case made and provided, I am entitled to maintain an action to recover damages for the death thus occasioned, and hereby claim $20,000 as the amount of such damages, no part of which has been paid.

ALVIN LEE JOSEPH.

Sworn to before me this 26th day of September, 1903.
[SEAL.] HENRY S. MARSHALL,
Notary Public, Sussex County, Delaware.

[Endorsed:] Claim of Alvin Lee Joseph.—Filed, September 14th, 1903.

42 United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the S. S. *Hamilton,* for a Limitation of Liability.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

J. Parker Kirlin, being duly sworn, says:

I am a member of the firm of Convers & Kirlin, proctors for Alvin Lee Joseph and Maggie E. Goslee, claimants herein, who reside at Trinity, Sussex County, Delaware, and from communications received from them and their local counsel, Howard M. Long, allege on information and belief as follows:

On May 4, 1903, Edward S. Goslee, then a resident of Sussex County, Delaware, was chief officer on the S. S. *Saginaw* at the time

of her collision with the S. S. *Hamilton*, set forth in the libel and petition. By reason of the said collision, and through the fault of the said petitioner, the Old Dominion Steamship Co., or its servants or agents in charge of the S. S. *Hamilton*, and without fault on his part, the said Edward S. Goslee was injured and killed.

43 The said claimants, Alvin Lee Joseph and Maggie E. Goslee, are the executor and executrix of the last will and testament of the said Edward S. Goslee, and have duly qualified as such, and been granted letters testamentary. Under and by virtue of the statute of the State of Delaware, in such case made and provided, the said claimants are entitled to maintain an action, and recover damages for the death thus occasioned, and hereby claim $20,000 as the amount of such damages, no part of which has been paid.

J. PARKER KIRLIN.

Sworn to before me this 11th day of September, 1903.
[SEAL.] JAMES T. KILBRETH,
Notary Public, New York County.

[Endorsed:] Claim of Alvin Lee Joseph and Maggie E. Goslee.—Filed September 14th, 1903.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The answer of Alvin Lee Joseph and Maggie E. Goslee, claimants, to the libel and petition of the Old Dominion Steamship Company, owner of the Steamship *Hamilton*, in a cause of limitation of liability, civil and maritime, alleges as follows:

First. They have no knowledge or information sufficient to form a belief as to the matters alleged in the first article of the libel, and leave the petitioner to make its due proof thereof.

44 *Second.* They have no knowledge or information sufficient to form a belief as to the matters alleged in the second article of the libel, except that they admit that the *Hamilton* left New York bound for Norfolk on Monday, May 4, 1903.

Third. They have no knowledge or information sufficient to form a belief as to the matters alleged in the third article of the libel, except that they admit that a collision occurred between the *S. S. Hamilton* and the *S. S. Saginaw*, as a result of which the steamship *Saginaw* sank.

Fourth. They have no knowledge or information sufficient to form a belief as to the matters alleged in the fourth article of the libel, and leave the petitioner to make its due proof thereof.

Fifth. They have no knowledge or information sufficient to form a belief as to the matters alleged in the fifth article of the libel, except that they admit that they have a claim for the loss of life of their testator who was the chief officer of the *Saginaw*, and was killed as a result of the collision hereinbefore referred to.

Sixth. They have no knowledge or information sufficient to form

a belief as to the matters alleged in the sixth article of the libel, and leave the petitioner to make its due proof thereof.

Seventh. They have no knowledge or information sufficient to form a belief as to the matters alleged in the seventh article of the libel, and leave the petitioner to make its due proof thereof.

Eighth. They have no knowledge or information sufficient
45 to form a belief as to the matters alleged in the eighth article of the libel, and leave the petitioner to make its due proof thereof.

Ninth. They have no knowledge or information sufficient to form a belief as to the matters alleged in the ninth article of the libel, and leave the petitioner to make its due proof thereof.

Tenth. They admit the Admiralty and Maritime jurisdiction of the United States and of this honorable court, but have no knowledge or information sufficient to form a belief as to the other matters alleged in the tenth article of the libel, and leave the petitioner to make its due proof thereof.

Eleventh. Further answering the libel and petition herein, the claimants Alvin Lee Joseph and Maggie E. Goslee, allege that at the time of the collision set forth in the libel and petition, Edward S. Goslee, then a resident of Sussex County, Delaware, was chief officer on the *S. S. Saginaw.* On information and belief they further allege that by reason of the said collision and through the fault of the said petitioner, the Old Dominion Steamship Co., or its servants or agents in charge of the *S. S. Hamilton,* and without fault on his part, the said Edward S. Goslee was injured and killed.

Twelfth. The said claimants Alvin Lee Joseph and Maggie E. Goslee are the executor and executrix of the last will and testament of the said Edward S. Goslee, and have duly qualified as such and been granted letters testamentary. Under and by virtue of the
46 statute of the State of Delaware in such case made and provided the said claimants are entitled to maintain an action and recover damages for the death thus occasioned and claim $20,000 as the amount of such damages, no part of which has been paid.

Wherefore, the claimants Alvin Lee Joseph and Maggie E. Goslee, pray that a decree may be entered in their favor against the petitioner for the sum of $20,000, with interest and costs, or for such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
HOWARD M. LONG,
Proctors for Claimants.

DISTRICT OF DELAWARE, *State of Delaware, County of Sussex, ss:*

Alvin Lee Joseph, one of the claimants above named, being duly sworn, says that he has read the foregoing answer and the same is true except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Sworn to before me this — day of October, 1903.
[SEAL.]
—— ——,
Notary Public, Sussex County.

[Endorsed:] Answer of Alvin Lee Joseph. Filed Oct. 17, 1903.

47 United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of THE OLD DOMINION STEAMSHIP CO., Owner of the S. S. *Hamilton*, for a Limitation of Liability.

EASTERN DISTRICT OF VIRGINIA,
State of Virginia, County of ——, ss:

Sallie T. Morris, being duly sworn, says: I reside at 2415 East Main Street, Richmond, Virginia, and am the widow and executrix of William Morris.

On May 4th, 1903, the said William Morris, then a resident of Richmond, Virginia, was employed as steward on the S. S. *Saginaw*, at the time of her collision with the S. S. *Hamilton*, set forth in the libel and petition.

By reason of the said collision and as I am informed and believe through the fault of the said petitioner the Old Dominion Steamship Co. or its servants or agents in charge of the said S. S. *Hamilton*, and without fault on his part, the said William Morris was injured and killed.

I have duly qualified as the administratrix of the estate of the said William Morris and have been granted letters of administration thereon. Under and by virtue of the statute of the State of
48 Virginia in such case made and provided, I am entitled to maintain an action to recover damages for the death thus occasioned, and hereby claim $15,000 as the amount of such damages, no part of which has been paid.

Sworn to before me this — day of September, 1903.
—— ——,
Notary Public, —— County, Virginia.

[Endorsed:] Claim of Sallie T. Morris—filed — 1903.

49 At a stated term of the United States District Court for the Southern District of New York, held at the Court Rooms *of* the Post Office Building in the Borough of Manhattan, City of New York, on the -th day of May, 1905.

Present· Honorable George B. Adams, United States District Judge.

In the Matter of the Application of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for Limitation of Liability.

Order Allowing Amendment of Claim of Sallie T. Morris.

This case having been heretofore referred to Henry W. Goodrich, Esq., United States Commissioner, to hear and compute the damages due to the claimants herein and to report the same to the court with all convenient speed, and the said commissioner having held hearings herein, but no report having as yet been filed, and Sallie T. Morris, by her proctors, Convers & Kerlin, having secured an order to show cause, returnable Tuesday, May 23d, 1905, why she should not be allowed to amend her claim heretofore filed herein *nunc pro tunc* as of the date of its filing, so that it shall be made by her in her capacity as widow of William Morris, deceased, in addition to her representative capacity as administratrix of the said William Morris, and the said motion having come on for hearing on the 23d day of May, 1905, pursuant to the said order to show cause;

Now on reading and filing the affidavit of John M. Woolsey, verified the 19th day of May, 1905, and after hearing John M. Woolsey, Esq., in support of said motion, and Harrington Putnam, Esq., in opposition thereto, and after due deliberation had thereon, and on motion of Convers & Kerlin, proctors for the claimant herein, it is

Ordered that Sallie T. Morris be and she here is allowed to file her claim in the above entitled proceeding in the form hereto annexed *nunc pro tunc* as of the date of the filing of her original claim herein; and it is by the court further

Ordered, that the leave so granted to Sallie T. Morris to so amend her claim, and to file her amended claim *nunc pro tunc* in the form hereto annexed, be granted without prejudice to the right of the petitioner herein, to take any objection to the allowance of such claim as amended, as it may be advised upon the coming in of the said commissioner's report; and it is by the court further

Ordered, that Henry W. Goodrich, Esq., commissioner herein, be and he hereby is ordered to report to the court, pursuant to the order of reference herein, on the claim of Sallie T. Morris, as amended in the form hereto annexed as if it had been originally filed in that form.

GEORGE B. ADAMS.

51 United States District Court, Southern District of New York.

In the Matter of the Application of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for Limitation of Liability.

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

J. Parker Kirlin being duly sworn, says:

I am the surviving member of the firm of Convers & Kirlin, proctors for Sallie T. Morris, the claimant herein. She resides at 2415 East Main street, Richmond, Virginia, and from communications received from her and from her counsel in Philadelphia, Howard M. Long, Esq., I allege, on information and belief, as follows:

On May 4, 1903, William Morris, then a resident of Richmond in the State of Virginia, was employed as steward on the steamship *Saginaw*. By reason of a collision at that time between the steamship *Hamilton* and the steamship *Saginaw*, as is set forth at length in the libel and petition herein, and through the fault of the said petitioner, the Old Dominion Steamship Company, or its servants or agents in charge of the steamship *Hamilton*, and without
52 fault on his part, the said William Morris was injured and killed. Said claimant, Sallie T. Morris, is the widow and is duly qualified as administratrix of the estate of the said William Morris, pursuant to the laws of Virginia, and has been granted letters of administration. Under and by virtue of the statutes of the State of Virginia in such cases made and provided, the said claimant is entitled to maintain an action and is the proper person to recover damages for the death of William Morris thus occasioned, and, under and pursuant to the laws of the State of Delaware in such cases made and provided, she is entitled to maintain an action to recover damages for the death of her husband, William Morris, as his widow.

She hereby claims damages for the death of her husband, William Morris, as his widow, and in her representative capacity as his administratrix appointed by a court of record in the State of Virginia, for the sum of Fifteen thousand dollars ($15,000) no part of which has been paid.

J. PARKER KIRLIN.

Sworn to before me this 19th day of May, 1905.

CHARLES R. HICKOX,
[SEAL.] *Notary Public, New York County.*

[Endorsed:] Order allowing amendment of claim of Sallie T. Morris, entered May 27th, 1905.

53 To the Honorable, the Judges of the District Court of the United States, for the Southern District of New York.

The answer of Sallie T. Morris, administratrix, claimant, to the libel and petition of the Old Dominion Steamship Company, owner of the steamship *Hamilton*, in a cause of limitation of liability, civil and maritime, alleges as follows:

First. She has no knowledge or information sufficient to form a belief as to the matters alleged in the first article of the libel, and leaves the petitioner to make its due proof thereof.

Second. She has no knowledge or information, sufficient to form a belief as to the matters alleged in the second article of the libel, except that she admits that the steamship *Hamilton* left New York bound for Norfolk on Monday, May 4, 1903.

Third. She has no knowledge or information sufficient to form a belief as to the matters alleged in the third article of the libel, except that she admits that a collision occurred between the steamship *Hamilton* and the steamship *Saginaw*, as a result of which the *Saginaw* sank.

Fourth. She has no knowledge or information sufficient to form a belief as to the matters alleged in the fourth article of the libel, and leaves the petitioner to make its due proof thereof.

Fifth. She has no knowledge or information sufficient to form a belief as to the matters alleged in the fifth article of the libel, except that she admits that she has a claim for the loss of life of her intestate who was steward on the steamship *Saginaw*, and who
54 was killed as a result of the collision therein before referred to.

Sixth. She has no knowledge or information sufficient to form a belief as to the matters alleged in the sixth article of the libel, and leaves the petitioner to make its due proof thereof.

Seventh. She has no knowledge or information sufficient to form a belief as to the matters alleged in the seventh article of the libel, and leaves the petitioner to make its due proof thereof.

Eighth. She has no knowledge or information sufficient to form a belief as to the matters alleged in the eighth article of the libel, and leaves the petitioner to make its due proof thereof.

Ninth. She has no knowledge or information sufficient to form a belief as to the matters alleged in the ninth article of the libel, and leaves the petitioner to make its due proof thereof.

Tenth. She admits the Admiralty and Maritime Jurisdiction of the United States, and of this Honorable Court, but has no knowledge or information sufficient to form a belief as to the other matters alleged in the tenth article of the libel, and leaves the petitioner to make its due proof thereof.

Eleventh. She admits the admiralty and maritime jurisdiction of the United States and of this honorable Court. She has no knowledge or information sufficient to form a belief as to the other matters alleged in the eleventh article of the libel and petition, and leaves the petitioner to make its due proof thereof.

55 *Twelfth.* Further answering, the claimant alleges that at the time of the collision set forth in the libel and petition,

William Morris, then a resident of Richmond, Virginia, was employed as steward on the S. S. *Saginaw*. On information and belief she further alleges that by reason of the said collision and through the fault of the said petitioner, the Old Dominion Steamship Company, or its servants or agents in charge of the S. S. *Hamilton*, and without fault on his part, said William Morris was injured and killed.

Thirteenth. The said claimant, Sallie T. Morris, is the widow and administratrix of the estate of the said William Morris and has duly qualified as such and has been granted letters of administration. Under and by virtue of the statute of Virginia in such case made and provided, the said claimant is entitled to maintain an action and recover damages for the death thus occasioned, and claims $15,000 as the amount of such damages, no part of which has been paid.

Wherefore, the claimant, Sallie T. Morris, prays that a decree may be entered in her favor against the petitioner for the sum of $15,000 with interest and costs, or for such other or further relief as the justice of the cause may require.

CONVERS & KIRLIN,
HOWARD M. LONG,
Proctors for Claimant.

SALLIE T. MORRIS.

56 EASTERN DISTRICT OF VIRGINIA,
State of Virginia, County of Henrico,
City of Richmond, ss:

Sallie T. Morris, the claimant above named, being duly sworn, says that she has read the foregoing answer, and the same is true except as to the matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

SALLIE T. MORRIS.

Sworn to before me this — day of October, 1903.

——— ———,
Notary Public.

[Endorsed:] Answer of Sallie T. Morris—filed October 17, 1903.

57 United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of the CLYDE STEAMSHIP COMPANY, Owner of the S. S. *Saginaw*, for a Limitation of Liability.

DISTRICT OF VIRGINIA,
State of Virginia, County of Henrico, ss:

Mary Anderson being duly sworn according to law, says: I am a resident of Richmond, Henrico County, Virginia, and am the administratrix of the estate of Sarah Elam.

On or about May 4th, 1903, the said Sarah Elam, then a resident of Richmond, Virginia, was stewardess on the S. S. *Saginaw*, at the time of her collision with the S. S. *Hamilton*, set forth in the libel and petition. By reason of the said collision, and as I am informed and believe, through the fault of the said petitioner, the Clyde Steamship Co. or its servants or agents in charge of the S. S. *Saginaw* and without fault on her part, the said Sarah Elam was injured and killed.

I have duly qualified as the administratrix of the estate of the said Sarah Elam and have been granted letters of administration on the said estate. Under and by virtue of the Statute of the
58 State of Delaware in such case made and provided, I am entitled to maintain an action to recover damages for the death thus occasioned and do hereby claim $15,000 as the amount of such damages, no part of which has been paid.

MARY ANDERSON.

Sworn to and subscribed before me this 11th day of Jan'y, A. D. 1905.

JNO. A. CURTIS,
[SEAL.] *Notary Public, Richmond City, Henrico County, Virginia.*

Commission expires Oct. 16, 1906.

[Endorsed:] Claim of Mary Anderson.—Filed February 1, 1905.

59 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 31st day of January, 1905.

Present: Hon. George B. Adams, U. S. District Judge.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for Liability, etc.

Order.

On reading and filing the petition of Mary Anderson, administratrix of the estate of Sarah Elan, deceased, verified the 21st day of January, 1905, and it appearing that said administratrix was unable to file her claim in the above entitled matter on or before the 6th day of October, 1903, at 10:30 o'clock a. m.; and it appearing that the said Mary Anderson, administratrix, should be permitted to file her claim herein, and upon the notice of motion herein and proof of due service thereof:

Now upon motion of Convers & Kirlin and Howard M. Long, proctors for said petitioner, it is

Ordered that the said Mary Anderson be and she hereby is
60 allowed to file her claim as administratrix of the estate of Sarah Elan, deceased, on or before the 7th day of February, 1905;

GEO. B. ADAMS.

[Endorsed:] Order allowing claim of Mary Anderson to be filed —entered Jan. 31, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton* for Limitation of Liability and Other Relief.

To the Honorable Judges of the United States District Court for the Southern District of New York, and Thomas Alexander, Esq., Commissioner, to receive claims in the above entitled matter:

The claimant, Joseph Lawson, administrator of the estate of Edmund Page, deceased, late of Norfolk, Norfolk County, State of Virginia, alleges as follows:

First. That the said Edmund Page, deceased, at the time
61 of his death and at all the times hereinafter mentioned was resident of Norfolk, Norfolk County, Virginia, and died intestate on or about the 5th day of May, 1903, on board the steamship *Saginaw* as hereinafter set forth. That your claimant, Joseph Lawson, was on the 16th day of May, 1904, duly appointed administrator of the goods, chattels and credits of the said Edmund Page, deceased, by the Circuit Court of Norfolk, Norfolk County, State of Virginia, and duly qualified as such administrator and entered upon the discharge of the duties of said office.

Second. That on or about the 5th day of May, 1903, the said Edmund Page of Norfolk, Norfolk County, Virginia, was employed as second cook on board the steamship *Saginaw,* of the Clyde Line, bound on a voyage from the port of Norfolk, to the port of Philadelphia.

Third. That the said steamship *Saginaw* while proceeding on her voyage as aforesaid when about off Winter Quarter Light Ship on the coast of the State of Virginia and within the jurisdiction of said State, at about 4:45 A. M., in a dense fog, came into collision with the said steamship *Hamilton* and sank with her cargo and a number of her passengers and crew, including claimant's intestate, Edmund Page, in the coast waters of the United States. Said collision was caused by the negligence of the petitioner and those in charge of the steamship *Hamilton* and the said Edmund Page was wholly free from negligence in the premises and the said Page went down in said steamship *Saginaw,* and by reason of the suddenness of the collision and sinking of the vessel, was unable to get out of said vessel to save his life and was drowned in said vessel *to save his*
62 *life and* —— ligence of the petitioners and those in charge of the *Hamilton* as aforesaid.

Fourth. Said collision was caused by the negligence and lack of care and skill of the petitioner and those in charge of the navigation of the steamship *Hamilton* in the following among other particulars to be shown at the trial:

(1). In not blowing the signal required by law.
(2). In not proceeding at a moderate rate of speed in a fog.
(3). In not having any, or any competent lookout.
(4). In having a defective reversing gear.
(5). In not stopping and backing the engines before the collision.
(6). In not taking timely and seasonable precautions to avoid the collision.

Fifth. That the said Edmund Page left surviving him a mother, Lucretia Stark, a widow, and a brother, Percy Page, and a sister, Rosa Page. That said deceased was the sole support of his family above mentioned and that said next of kin and his personal representative, the claimant, have been damaged by reason of the matters aforesaid in the sum of Eight Thousand Dollars ($8,000). Said deceased was a cook by trade, and at the time of his death was earning Twenty Dollars ($20) a month and his board and lodging, which was part of his said compensation. That the said Edmund Page at the time of his death had with him on the steamship *Saginaw* personal effects to the value of One Hundred Dollars ($100), which were lost by reason of said collision and negligence as aforesaid.

63 *Sixth.* That the said steamship *Saginaw* was a domestic vessel of the United States and was owned by the C-yde Steamship Company, a corporation organized and existing under the laws of the State of Delaware. According to the laws of the State of Virginia, Delaware and New York a right of action exists in favor of your claimant to recover from the petitioner as owner of the steamship *Hamilton* the pecuniary damages caused by the death of the said Edmund Page as aforesaid. That the above petitioner, the Old Dominion Steamship Company, is a corporation organized and existing under the laws of the State of Delaware, and is and was at the times hereinafter mentioned, the sole owner of the steamship *Hamilton*, the subject of the petition herein.

Wherefore, Claimant respectfully makes and files this, his claim, against the above petitioner for the sum of eight Thousand One Hundred Dollars ($8,100) damages, as set forth above, and prays that the commissioner appointed to receive claims herein will report to the court that the said sum is due to this claimant and should be allowed to him out of any funds now or hereafter on deposit in the registry of this court in this proceeding or paid by the stipulators who have given a stipulation for the value of said vessel herein, and that this court will decree that this claimant recover from the petitioner herein his damages as aforesaid, with interests and costs, and have such other and further relief as may be just.

HUNT, HILL & BETTS,
Proctors for Claimant, 120 Broadway,
Borough of Manhattan, New York City.

64 Sworn to and subscribed before me in the City and County of Norfolk, —— —— District of Virginia, on the — day of ——, 1904. —— ——,
Notary Public for the City and County of Norfolk.

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

George Whitefield Betts, Jr., being duly sworn, deposes and says that he is a member of the firm of Hunt, Hill & Betts, the proctors for the claimant above named; that he has read the foregoing claim and that the same is true to the best of his knowledge, information and belief; that the sources of his information are correspondence with the claimant's attorneys and investigations made in the matter.

The reason this verification is not made by claimant is because the claimant resides without this district and more than one hundred miles therefrom and is absent from this district.

GEO. WHITEFIELD BETTS, JR.

Sworn to before me this 27th day of May, 1904.

J. FOSTER SYMES,
Notary, New York County.

[Endorsed:] Claim of Joseph Lawson—filed May 27, 1904.

65 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 24th day of May, 1904.

Present: Hon. George B. Adams, District Judge.

In the Matter of Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton*, for Limitation of Liability and Other Relief.

On reading and filing the petition of Joseph Lawson verified May 17, 1904, and the affidavit of Geo. Whitefield Betts, Jr., verified May 23, 1904, and it appearing that said administrator was unable to file his claim herein on on before October 6, 1903, and it appearing that he should be permitted to file his claim herein upon the order to show cause herein dated May 23, 1904, and proof of service thereof.

Now, upon motion of Hunt, Hill & Betts, proctors for said petitioner, and no one appearing in opposition, it is

66 Ordered, that the said Joseph Lawson be and he hereby is allowed to file his claim as administrator of the Estate of Edmund Page for damages for his death and for his personal effects lost, on or before the 28th day of May, 1904.

And it is further ordered, that Thomas Alexander, Esq., Commissioner, appointed to receive claims in the above entitled action be and hereby is ordered to receive the said claim of the petitioner Joseph Lawson, and file a supplementary report on the same in the above entitled proceeding.

GEO. B. ADAMS,
U. S. District Judge.

[Endorsed:] Order allowing claim of Joseph Lawson to be filed—entered May 24, 1904.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton*, for Limitation of Liability and Other Relief.

To the Honorable Judges of the United States District Court for the Southern District of New York, and Thomas Alexander, Esq., Commissioner to receive claims herein:

67 The claimant, Mary Swanson, administratrix of the estate and widow of Peter Swanson, deceased, alleges as follows.

First. She resides in the City of Philadelphia, State of Pennsylvania, and is the widow of Peter Swanson, deceased, who died intestate on or about the 5th day of May, 1903, on board the steamship *Saginaw*, as hereinafter set forth, and who resided before his death in said City of Philadelphia and State of Pennsylvania.

On the 23d day of October, 1903, letters of administration upon the goods, chattels and credits of said Peter Swanson, deceased, were by the Register for the Probate of Wills and granting letters of administration in and for the City and County of Philadelphia in the Commonwealth of Pennsylvania, the duly authorized judicial officer for that purpose, duly issued and granted to your claimant who thereupon duly qualified as such administratrix and entered upon the discharge of the duties of her said office.

Second. The above named petitioner, Old Dominion Steamship Company, is a corporation organized and existing under the laws of the State of Delaware and is and was at the times hereinafter mentioned the sole owner of the steamship *Hamilton*, the subject of the petition herein.

Third. On or about the 5th day of May, 1903, the claimant's intestate, Peter Swanson, was passenger on board of the steamship *Saginaw* of the Clyde Line, bound on a voyage from the port of Norfolk, Virginia, to the port of Philadelphia.

68 *Fourth.* The said steamship *Saginaw* while proceeding on her said voyage when about off Winter Quarter Light Ship, in a dense fog, on Tuesday, May 5th, 1903, at about 4:45 A. M., came into collision with the said steamship *Hamilton*, and sank with her cargo and a number of her passengers and crew, including claimant's intestate, Peter Swanson, in the coast waters of the United States and of the State of Virginia and within the jurisdiction of said State. Said collision was caused by the negligence of the petitioner and those in charge of the *Hamilton*.

Fifth. Said collision was caused by the negligence and lack of care and skill of the petitioner and those in charge of the navigation of the steamship *Hamilton* in the following among other particulars to be shown at the trial:

(1) In not blowing the signal required by law.
(2) In not proceeding at a moderate rate of speed in a fog.
(3) In not having any, or any competent, lookout.
(4) In having a defective reversing gear.
(5) In not stopping and backing the engines before the collision.

(6) In not taking timely and seasonable precautions to avoid the collision.

Sixth. Claimant's intestate, Peter Swanson, went down with said steamship *Saginaw,* and by reason of the suddenness of the collision and sinking of the vessel was unable to get out of said vessel or save his life and was drowned and lost his life in and on said steamship *Saginaw* by reason of the negligence of the petitioner and those in charge of the *Hamilton.*

69 *Seventh.* Said steamship *Saginaw* was a domestic vessel of the United States and was owned by the Clyde Steamship Company, a corporation organized and existing under the laws of the State of Delaware. According to the laws of the States of Pennsylvania, Delaware and New York, a right of action exists in favor of your claimant to receive claims herein will report to the Court steamship *Hamilton,* the pecuniary damages suffered by her and her infant son by the death of said Peter Swanson.

Eighth. Said Peter Swanson left him surviving the claimant, his widow, and his infant child, a son ten years of age. Said deceased was the sole support of his wife and child and your claimant, his widow, and his said infant son as next of kin and representatives have been damaged by reason of the matters aforesaid in the sum of twelve thousand dollars ($12,000). Said deceased was a shoemaker by trade, and was able to earn before his death fifteen dollars ($15) per week.

Wherefore, claimant makes and files this her claim against the above named petitioner for the sum of twelve thousand dollars ($12,000) damages and prays that the commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant and should be allowed to her out of any funds now or hereafter on deposit in the registry of this Court in this proceeding or paid by the stipulators who have given a stipulation for the value of said vessel herein and that this Court will decree that this claimant recover from the petitioner herein her damages as aforesaid with interest and costs and have such other and further relief as may be just.

HUNT, HILL & BETTS,
Proctors for Claimant, 120 *Broadway,*
Borough of Manhattan, New York City.

(County Clerk's Certificate and Seal.)

70 Sworn to and subscribed before me in the City and County of Philadelphia, Eastern District of Pennsylvania, on the — day of October, 1903.

MARY SWANSON.

F. FOSTER THOMAS,
[NOTARY SEAL.] *Notary Public for the City and County of Philadelphia.*

Commission expires January 19th, 1907.

[Endorsed:] Claim of Mary Swanson.—Filed November 27, 1903.

At a Stated term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 24th day of November, 1903.

Present: Hon. George B. Adams, District Judge.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton* for Limitation of Liability and Other Relief.

71 On reading and filing the petition of Mary Swanson, administratrix of the estate of Peter Swanson, deceased, verified the 31st day of October, 1903, and it appearing that said administratrix was unable to file her claim in the above entitled matter on or before the 6th day of October, 1903, and it appearing that the said Mary Swanson, administratrix, should be permitted to file her claim herein, and upon the notice of motion herein and proof of due service thereof.

Now upon motion of Hunt, Hill & Betts, proctors for said petitioner, it is

Ordered, that the said Mary Swanson be and hereby is allowed to file her claim as administratrix of the estate of Peter Swanson, deceased, on or before the 24th day of November, 1903, and it is further

Ordered, that Thomas Alexander, Esq., a commissioner appointed to receive claims in the above entitled matter be and hereby is ordered to receive the said claim of the petitioner, Mary Swanson, administratrix, and to file a supplem-ntary report on the same in the above entitled proceeding.

GEO. B. ADAMS.

[Endorsed:] Order allowing claim of Mary Swanson to be filed, entered November 27, 1903.

72 At a Stated Term of the United States District Court for the Southern District of New York, held at the Court Rooms in the Post Office Building in the Borough of Manhattan, City of New York, on the 18th day of July, 1905.

Present: Hon. George B. Adams, District Judge.

In the Matter of the Application of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of Steamship *Hamilton* for Limitation of Liability.

Upon the motion of Hunt, Hill & Betts, proctors for claimant, Mary Swanson, and upon reading and filing the annexed consent of the parties to this proceeding, and the amendment to the claim of Mary Swanson hereto annexed, and this motion coming on to be heard; it is hereby

Ordered, that Mary Swanson be, and she hereby is, allowed to file the annexed amendment to her claim in the above entitled proceedings, *nunc pro tunc* as of the date of the filing of her original claim herein, without prejudice to the right of the petitioner herein to make any objection to the allowance of such claim in so far as it may be affected by the statutes of limitations.

GEORGE B. ADAMS,
United States District Judge.

73 We consent to the entry of the foregoing order.

WING, PUTNAM & BURLINGHAM,
Proctors for the Old Dominion S. S. Co.
ROBINSON, BIDDLE & WARD,
Proctors for Clyde Line Steamship Co.

[Endorsed:] Order amending claim of Mary Swanson, entered July 20th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owner of the Steamship *Hamilton* for Limitation of Liability and Other Relief.

To the Honorable Judges of the United States District Court for the Southern District of New York and Thomas Alexander, Esq., Commissioner to receive claims herein:

The claimant, Mary Swanson, widow of Peter Swanson, deceased, alleges as follows:

First. She resides in the City of Philadelphia, State of Pennsylvania, and is, and was at all times herein mentioned, the
74 widow of Peter Swanson, deceased, who died intestate, on or about the 5th day of May, 1903, on board the steamship *Saginaw* as hereinafter set forth, and who resided before his death in said City of Philadelphia, and State of Pennsylvania.

Second. The above named petitioner, Old Dominion Steamship Company, is a corporation organized and existing under the laws of the State of Delaware and is and was at the times hereinafter mentioned the sole owner of the steamship *Hamilton*, the subject of the petition herein.

Third. On or about the 5th day of May, the claimant's husband, Peter Swanson, was a passenger on board of the steamship *Saginaw* of the Clyde Line, bound on a voyage from the port of Norfolk, Virginia, to the port of Philadelphia.

Fourth. The said steamship *Saginaw*, while proceeding on her said voyage, when about off Winter Quarter Light in a dense fog on Tuesday, May 5th, 1903, at about 4.45 A. M., came into collision with the said steamship *Hamilton* and sank with her cargo and a number of her passengers, including claimant's husband, Peter Swanson, in the coast waters of the United States and of the State of Virginia and within the jurisdiction of said State. Said collision

was caused by the negligence of the petitioner and those in charge of the *Hamilton*.

Fifth. Said collision was caused by the negligence and lack of care and skill of the petitioner and those in charge of the navigation of the steamship *Hamilton* in the following respects, among other particulars to be shown at the trial:

(1) In not blowing the signal required by law.

75 (2) In not proceeding at a moderate rate of speed in a fog.

(3) In not having any, or any competent lookout.

(4) In having a defective reversing gear.

(5) In not stopping and backing the engines before the collision.

(6) In not taking timely and seasonable precautions to avoid the collision.

Sixth. Claimant's husband, Peter Swanson, went down with said steamship *Saginaw* and by reason of the suddenness of the collision and sinking of the vessel was unable to get out of said vessel or save his life and was drowned and lost his life in and on said steamship *Saginaw* by reason of the negligence of the petitioner and those in charge of the *Hamilton*.

Seventh. Said steamship *Saginaw* was a domestic vessel of the United States and was owned by the Clyde Steamship Company, a corporation organized and existing under the laws of the State of Delaware. According to the laws of the State of Pennsylvania, Delaware and New York a right of action exists in favor of your claimant to recover from the petitioner, as owner of the steamship *Hamilton*, the pecuniary damages suffered by her and her infant son by the death of said Peter Swanson.

Eighth. Said Peter Swanson left him surviving the claimant, his widow, and his infant child, a son ten years of age. Said deceased was the sole support of his wife and child, and your claimant, his widow, and his said infant son have been damaged by reason

76 of the matters aforesaid in the sum of Twelve thousand dollars ($12,000). Said deceased was a spar maker by trade, and was able to earn before his death Fifteen dollars ($15) per week.

Wherefore claimant makes and files her claim against the above named petitioner for the sum of Twelve thousand dollars ($12,000) damages and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due this claimant and should be allowed to her out of any funds now or hereafter on deposit in the registry of this Court in this proceeding or paid by the stipulators who have given a stipulation for the value of said vessel herein and that this Court will decree that this claimant recover from the petitioner herein her damages as aforesaid, with interest and costs and have such other and further relief as may be just.

HUNT, HILL & BETTS,
Proctors for Claimant, 111 *Broadway*,
Borough of Manhattan, New York City, N. Y.

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

Geo. Whitefield Betts, Jr., being duly sworn, says that he is a member of the firm of Hunt, Hill & Betts, proctors for Mary Swanson, claimant in the above entitled petition. That the reason the same is not verified by the said claimant is because she is not within this district. That deponent is familiar with all the proceedings had herein and has personally conducted them, and is duly
77 authorized to verify the above claim in behalf of the said Mary Swanson.

GEO. WHITEFIELD BETTS, JR.

Sworn to before me this 13th day of July, 1905.
J. FOSTER SYMES,
[SEAL.] *Notary Public, New York County.*

[Endorsed:] Amended Claim of Mary Swanson.—Filed ——, 1905.

At a stated term of the United States District Court for the Southern District of New York, held at the court rooms in the Post Office Building in the City of New York, on the — day of March, 1904.

Present: Hon. George B. Adams, District Judge.

In the Matter of the Application of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability as Owner of the Steamship *Hamilton* and for Other Relief.

In Admiralty.

Order.

Upon the underwritten consents of the proctors for the parties to this proceeding, and upon the petition and order for the
78 filing of the claim of Mary Swanson as administratrix, and upon said claim of Mary Swanson filed herein, and upon all the papers in this proceeding, and on motion of Messrs. Hunt, Hill & Betts, proctors for Mary Swanson, it is hereby

Ordered, that said claimant Mary Swanson, may adopt as and for her answer herein to the petition of the petitioner for limitation of liability, the answer filed herein for Edward B. Cole and others, by Hunt, Hill & Betts, proctors for said claimants, and that said answer of Edward B. Cole and others, claimants, is hereby adopted as the answer of Mary Swanson, claimant, to said petition for a limitation of liability, with the same force and effect as if she had filed a separate answer to said petition.

GEO. B. ADAMS,
United States District Judge.

[Endorsed:] Order adopting answer of Cole, *et al.*, as answer of Mary Swanson.—Entered 1904.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Edward B. Cole, John H. Trevor, Harry F. Winters, Jr., Eagle Skirt and Suit Manufacturing Company, S. Moskovitz & Company and George B. Hood, claimants, to the libel and petition of the Old Dominion Steamship Company, owner of the steamship *Hamilton*, for limitation of liability and other relief alleges as follows:

79 *First.* They admit the allegations contained in the First Article of the libel.

Second. They deny any knowledge or information sufficient to form a belief as to the allegations contained in the Second Article of the libel and demand strict proof thereof, if, and in so far as material, except they admit that the *Hamilton* was bound from New York for Norfolk.

Third. They deny any knowledge or information sufficient to form a belief as to the allegations contained in the Third Article of the libel and petition and demand strict proof thereof, if, and in so far as material, except they deny that at the time, or shortly before the collision, the *Hamilton's* way had nearly stopped, but allege on the contrary that at the time of the collision and before it the *Hamilton* was going at an undue and immoderate rate of speed and ran into the *Saginaw* at a great speed cutting the *Saginaw* in two; and it admits that the *Hamilton* lowered boats and saved some of the officers, passengers and crew of the *Saginaw*, and that the *Saginaw* quickly sank stern first.

Fourth. They deny the allegations contained in the Fourth Article of the libel and allege on the contrary that the collision and damages consequent thereon were due to, and caused by, the negligence and lack of care and skill of the petitioner and of those in charge of the navigation of the Steamship *Hamilton* in the following, amongst other particulars to be shown at the trial:

I. In not blowing the signals required by law.

II. In not proceeding at a moderate rate of speed in a fog.

80 III. In not having any, or any competent lookout.

IV. In having a defective reversing gear.

V. In not stopping and backing the engines seasonably before the collision.

VI. In not taking timely and seasonable precautions to avoid the collision.

Fifth. They deny any knowledge or information sufficient to form a belief as to the matters alleged in the Fifth Article of the libel except that they admit that the libel has been filed against the *Hamilton* to recover about the sum of $302,000.

Sixth. They deny any knowledge or information sufficient to form a belief as to the matters alleged in the Sixth Article of the libel.

Seventh. They deny any knowledge or information sufficient to form a belief as to the matters alleged in the Seventh Article of the libel.

Eighth. They deny the matters alleged in the Eighth Article of the libel.

Ninth. They admit the matters alleged in the Ninth Article of the libel.

Tenth. They admit the matters alleged in the Tenth Article of the libel except they deny the truth of the premises of the libel.

Eleventh. As a result of the collision mentioned in the libel and petition the Steamer *Saginaw* sank and the claimants suf-
81 fered damages as alleged in the respective claims filed with Thomas Alexander, Commissioner, which are hereby made a part of this answer.

Wherefore, the claimants pray that the libellant and petitioner may be held liable for the damages sustained by the claimants in consequence of said collision, and that this Honorable Court will be pleased to direct payment to the claimants for their said damages as they may be entitled to receive.

HUNT, HILL & BETTS,
Proctors for Claimants,
EDWARD B. COLE,
JOHN H. TREVOR,
HARRY F. WINTERS, JR.,
EAGLE SKIRT & SUIT MFG. CO.,
S. MOSKOVITZ & CO.,
GEORGE B. HOOD.

STATE OF PENNSYLVANIA,
County of Philadelphia, Eastern District of Pennsylvania:

John H. Trevor, being duly sworn, says that he is one of the claimants herein and that the foregoing answer is true to the best of his knowledge, information and belief.

JOHN H. TREVOR.

Sworn and subscribed before me this 7th day of Oct., 1903.

AUG. T. ASHTON,
Notary Public.

Commission expires January 14, 1905.

[Endorsed:] Answer of Cole *et al.*, filed October 20th, 1903.

82 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY for Limitation of Liability.

Deposition of Stokely Warrington, taken on behalf of the Old Dominion Steamship Company, at the office of Messrs. Wing, Putnam & Burlingham, No. 45 William Street, New York City, on the 11th day of February, 1904.

Present:

Mr. Putnam for the Old Dominion Steamship Company.
Mr. Hough for the Clyde Steamship Company.
Mr. Mynderse for the British & Foreign Marine Ins. Co. and other insurance companies.
Mr. Kirlin for A. L. Joseph and Sallie T. Morris, Adm'rs.
83 Mr. Symmes for White, Williamson & Company.
Mr. Betts for Edward B. Cole and others.

STOKELY WARRINGTON, being duly sworn and examined as a witness for the Old Dominion Steamship Company, testifies:

By Mr. PUTNAM:

Q. Where do you live?
A. 710 North Broadway, Baltimore City.
Q. In the month of May last year what vessel were you in command of?
A. The *Cumberland.*
Q. What kind of a vessel is she?
A. She is a towboat; an ocean towboat.
Q. What size?
A. 145 feet long; 800 horse power.
Q. What Company is the owner of her?
A. The Consolidation Coal Company.
Q. What trade was she running in?
A. In the coal trade.
Q. From what ports?
A. From Baltimore to eastern ports; Boston, Portland, Portsmouth.
Q. On the 4th of May of last year did your vessel leave Baltimore and go up east?
A. She left on the 3d.
Q. And came out through the cape on the 4th?
A. Yes sir.
Q. What was the voyage that she was making, to what places?
A. I don't remember just now; Boston and eastern ports.

Q. Did you have barges in tow?
A. Three.
Q. Do you remember the incidents of the voyage with respect to being the same voyage with a collision of the *Hamilton* and *Saginaw?*
A. Yes, sir.
Q. How was that brought to your attention?
A. Through reading the account of the collision.
84 Q. When did you first hear of that?
A. About four days later than the occasion happened.
Q. When you arrived at your port?
A. Yes, sir.
Q. Were you acquainted with any of the people on the *Saginaw?*
A. Yes.
Q. Which ones were you acquainted with?
A. I was well acquainted with the mate.
Q. He was the man who was lost?
A. Yes, sir.
Q. How long had you known him?
A. From a child up to the present; I hadn't seen him for a good many years, but I knew about him.
Q. On the voyage that you were making at that time did you pass the Winter Quarter light vessel?
A. Yes, sir.
Q. What time in the morning did you pass her?
A. 9.10.
Q. How do you happen to remember that distinctly?
A. Well, through,—the mate took the time of the—or he thought he had the time of the lightship at 6.45, which was not correct.
Q. Were you on deck at 6.45?
A. I was.
Q. Were you on deck at 6.45 with reference to passing the lightship?
A. At 6.30 I went to breakfast, and at 6.45 I came up and the mate told me he had just passed the lightship, and I told him he was mistaken. He had hauled the ship up on the NE by N ½ N course, which we were running before the NE ½ N, and I swung her off again.
Q. Had you heard the whistle of any vessel at 6.45?
A. I had heard a whistle on our port bow at 6.30.
Q. And at 6.45 did you hear the same whistle?
A. The same whistle was aft of our beam.
Q. Did that indicate to you whether it was a lightship or a moving vessel?
A. It indicated to me that it was a steamer bound south.
85 Q. When you finally did reach the lightship at 9.10 what was the condition of the weather then?
A. It was clearing up.
Q. Were you able, after you passed it, to see it?
A. Yes.
Q. Previous to 9.10 how had the weather been?

A. Very foggy.
Q. How was it at midnight?
A. It was thick fog at midnight.
Q. About what time did you run into the fog?
A. About a quarter to twelve.
Q. From a quarter to twelve up to nine in the morning was it thick fog during all the time?
A. Well, there was times in the fore part of the watch, say between one and three, that it was a little scaled, so that you could see the length of our tow.
Q. Then you could see the lights on the barges astern?
A. Yes, sir.
Q. At other times were you able to see the lights astern?
A. No, sir; at daylight, when day broke it was so thick you couldn't see half way to the first barge, and remained so until after eight o'clock.
Q. Was your whistle kept regularly going?
A. Yes, sir.
Q. Did you do anything about reducing your speed?
A. Yes.
Q. What is your usual speed with the Cumberland, towing three barges?
A. Five and a quarter.
Q. That is five and a quarter nautical miles?
A. Yes.
Q. Do you know about what time on the night of May 4th you passed Hog Island?
A. 10.55.
Q. At that time how was the weather?
A. It was fine.
Q. How soon after that did you strike fog?
A. A quarter to twelve the fog set in.
86 Q. That would make you what distance to the north of Hog Island, about?
A. About four miles; three and a half or four miles.
Q. How was the wind, if you remember, between the time of passing Hog Island and the time of getting to the Winter Quarter lightship?
A. NE.
Q. Did that have any effect on the current?
A. Well, yes, sir, a little.
Q. What effect on the current would it have?
A. How much, do you mean?
Q. Yes.
A. The wind hadn't been to the eastward long enough to make more than a quarter or half a knot, I don't think.
Q. That is, it would make quarter or half a knot in which direction?
A. Southwesterly.
Q. You didn't see anything at 6.45, when this whistle was heard, of any vessel, yourself.
A. No, sir.

Q. You simply heard the sound?
A. I simply heard the sound.
Q. Was it a long blast?
A. Yes, sir; one long blast.
Q. When you slowed down, during the denser part of the fog, to what speed were you going then?
A. Three-quarters speed; about three and three-quarters knots.
Q. Do you know what the distance is from Cape Charles light vessel up to Winter Quarter light vessel?
A. 58¾ miles.
Q. From Cape Charles light vessel up to Hog Island, when you were abreast of Hog Island light, what distance is that?
A. Sixteen miles.
Q. Who was the mate who was with you at that time who thought you were abreast of Winter Quarter light vessel?
A. Downing; Captain Downing now, of the tug *Tormentor*.
Q. That isn't in the same company with the *Cumberland*?
A. No, sir.
87 Q. How long is it since he had left the *Cumberland*?
A. I think it was sometime in June.
Q. You are still the captain of the *Cumberland*?
A. Yes.
Q. You are simply on shore leave now?
A. Yes, sir.
Q. And you came here from Baltimore to give your testimony?
A. Yes, sir.

Cross-examined by Mr. HOUGH:

Q. What time of night did you pass Hog Island?
A. 10.55.
Q. P. M.?
A. Yes.
Q. What day of the month?
A. May the 4th.
Q. At what time did you find yourself abreast of Winter Quarter light?
A. 9.10, the 5th of May, in the morning.
Q. When you passed Winter Quarter light was the whistle of the lightship sounding, or was the weather too clear to require it?
A. The whistle wasn't blowing when I passed her, but it had been a few minutes before.
Q. What happened first; your hearing of the whistle on the lightship, or seeing it?
A. I heard the whistle first, before I saw it.
Q. At what time did you hear the whistle first?
A. About twenty minutes before I passed it.
Q. How many times did the whistle blow before you saw it?
A. I think it was three times I heard the sound of the whistle.
Q. And then the fog lifted?
A. Yes, sir.

Q. What hour of the night did you hear the long whistle to which you have referred?
A. At half-past six in the morning.
Q. Do you know where your vessel was at that time; that is, how far from the Winter Quarter lightship?
A. She must have been somewhere between ten and twelve
88 miles to the southward of the lightship.
Q. You didn't identify the vessel from which that sound came, did you?
A. No, sir.
Q. You didn't see it at all?
A. No, sir.
Q. Would you describe the fog in which you were that night as a thick fog or a moderate fog?
A. At times it was very thick.
Q. Did it come in banks?
A. From daybreak up to half-past eight it was a dense fog; you could see nothing.
Q. At what time did the day break on that morning in May?
A. About four o'clock.
Q. You think the fog got denser as the sun came up?
A. Yes, sir.
Q. And at what time of the night was it that you had struck the fog?
A. A quarter of twelve on the 4th.
Q. From a quarter of twelve until daybreak how should you describe the fog?
A. It was thick; at times it would scale a little.
Q. Just describe what you mean by the word "scale."
A. Well, getting thinner.
Q. During all the time from a quarter of twelve until half-past eight in the morning did you find the fog thick enough to require you, in your judgment, to sound the whistle?
A. Yes, sir.
Q. And slow your speed?
A. Yes, sir.

Cross-examined by Mr. MYNDERSE:

Q. How long was your tow?
A. Nearly half a mile.
Q. Is the current along that stretch of coast dependent upon the winds?
A. Yes, sir.
Q. If there is no wind there is no current?
A. Well, it always seems to me in the spring of the year—at that time of year it is always a southwesterly current, running to the southwest.
89 Q. And on this occasion you thought it was about a quarter of a knot an hour?
A. From a quarter to half a knot; sometimes if the wind is to

the eastward two or three days you have a knot current running to the southwest.

Cross-examined by Mr. KIRLIN:

Q. How long was the line between your tug and the first barge?
A. 220 fathoms.
Q. What kind of a barge was the first one?
A. She is a built barge; a three-masted barge, 1700 tons.
Q. As you came up that morning had you heard any other whistles at any time before you heard this one about 6.30?
A. No, sir.
Q. What course had you been on from Hog Island?
A. NE, ½ N.
Q. How close did you pass Hog Island light?
A. About eight miles.
Q. Did you maintain that course steadily?
A. Yes, sir, we maintained that course steadily from Winter Quarter light—from Cape Charles light-ship.
Q. Your course was shifted by your mate about 6.30, without your knowing it, as I understand?
A. Yes, sir.
Q. And you shifted it back?
A. Yes, sir.
Q. Then how did you make the Winter Quarter light?
A. I was about two miles and a half off of her when we passed her; that is what I aimed it from; on that course.
Q. Have you brought your log with you?
A. No, sir; I didn't come from my boat; I was home on sick leave.

Cross-examined by Mr. BETTS:

Q. What was the condition of the fog between four and five A. M.?
A. Very dense.
90 Q. Didn't you say on your direct that you couldn't see half-way from your stern to the bow of your first barge?
A. Yes, sir.
Q. Did it continue dense throughout the hour from four to five A. M.?
A. Yes, sir.

Redirect examination by Mr. PUTNAM:

Q. How was it, say from three to four, with reference to the fog?
A. It was thick.
Q. About the same as it was afterwards?
A. Not quite so thick as it was after the day broke good.
Q. Was it dense enough to reduce your speed from three to four?
A. Yes, sir.

Q. When you say that the line from your stern to the leading barge was 220 fathoms, was it all out?
A. No, sir.
Q. About what length was out?
A. About 220 fathoms; we had 240 fathoms.
Q. But 220 was entirely out?
A. Yes, sir.
Q. Does that include the amount that is used on both vessels to make fast?
A. Yes, sir.
Q. When you say that you passed Winter Quarter lightship at the distance you speak of, you mean you passed that to the east of it?
A. Yes.
Q. Is that about the usual distance?
A. That is about the usual distance I aim to go in the summer time; so that it may be a little outside of the track of the line of the steamers that are running direct between the lightships.

Cross-examined by Mr. SYMMES:

Q. You passed Winter Quarter light-ship at 9.10?
A. Yes.
Q. It was clear at that time?
A. It was clearing; it was not perfectly clear.
91 Q. You were a good deal south of Winter Quarter at the time of the collision, 4.45?
A. Yes, sir.
Q. Did you notice whether this fog was moving with the wind?
A. You couldn't tell; it was so dense you couldn't tell how it was moving.
Q. It wasn't moving with the wind in a bank?
A. No, sir; it wasn't that kind of a fog.

By Mr. PUTNAM:

Q. Where does this current, that you speak of setting to the southwest, run; from what point to the north down to what point to the south?
A. As I have found it, all the way along the coast.
Q. Is it above Barnegat?
A. Yes.
Q. And it goes down to Cape Charles?
A. Yes.

92 District Court of the United States for the Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY for Limitation of Liability.

Deposition taken on behalf of the Clyde Steamship Company, at the office of Messrs. Robinson, Biddle & Ward, No. 79 Wall Street, New York, on the 11th day of June, 1903.

Appearances.

Messrs. Wing, Putnam & Burlingham (Mr. Putnam), for the Old Dominion Steamship Company;

Messrs. Robinson, Biddle & Ward (Mr. Ward), for the Clyde Steamship Company and part of the cargo;

Messrs. Butler, Notman, Joline & Mynderse (Mr. Mynderse), for the cargo of the *Saginaw*.

93 It is stipulated that the testimony of James Jacobsen, a witness on behalf of the Clyde Steamship Company, may be taken stenographically; that the notes when written out, may be used by either party in each of these cases, with the same force and effect as though taken in open court; stenographer's fees to be taxed.

JAMES JACOBSEN, being duly sworn and examined as a witness for the Clyde Steamship Company, testifies:

By Mr. WARD:

Q. How long have you been going to sea?
A. Since I was fourteen and a half years old; since I left school.
Q. And you are now twenty-one?
A. Yes.
Q. Were you on the steamship *Saginaw* on the occasion of her collision with the steamship *Hamilton?*
A. Yes.
Q. How long had you been on the *Saginaw?*
A. Five days; it was the sixth day we struck.
Q. In whose watch were you?
A. I was in the mate's watch.
Q. When did you go on duty before the collision?
A. Four o'clock in the morning.
Q. What was the character of the weather?
A. It was a dense fog; thick fog.
Q. So dense that it wet you at all?
A. Yes, I was wet; that was the reason I got my oil skins.
Q. Did you notice whether the whistle of the *Saginaw* was blowing?
A. Yes.

Q. How was it blowing; how often?
A. A couple of minutes between each.
Q. The regular fog signal?
A. Yes.
94 Q. All the time?
A. Yes.
Q. What was the first thing that you knew of the neighborhood of the steamship *Hamilton?*
A. I heard whistling a little on the port bow.
Q. When you heard that whistle did you do anything?
A. Yes, sir, I sung out and reported.
Q. Did you get any answer?
A. Yes, I got an answer.
Q. What did they say?
A. "All right."
Q. What was the next thing?
A. The captain came alongside of me; just when I sung out the captain came.
Q. The moment you sung out he came forward?
A. Yes, sir, just when I sung out he came forward.
Q. After he came forward what was the next thing that happened?
A. Then I heard another whistle.
Q. Where was that whistle?
A. It was on the port bow; and then we saw the ship was coming.
Q. How long after you heard that second whistle did you see the ship?
A. About two minutes.
Q. Did the captain give any order to the wheelhouse?
A. Yes, sir.
Q. What order did he give?
A. As soon as he came up he sung out "Port your helm."
Q. That was as soon as he came forward?
A. Yes, sir, as soon as he came up.
Q. Did he give any other order?
A. Yes, sir; hard-a-port, and then we saw the ship.
Q. Where did the ship strike you?
A. Struck on the port quarter.
Q. How much of a blow did she give you?
A. Oh, there was—it took us just aft and took the stern.
Q. Cut the stern off?
A. Yes, sir, took the corner of the house, and it was so that nobody could pass the house; and I was looking at the damage that was done us.
95 Q. Did you see anything coming out of the steamer?
A. Yes, I saw the cargo on the boat that was floating out all over; bundles of cotton, and I don't know what it was, that was floating; it was coming out all the time.
Q. Have you any idea at what speed the *Hamilton* was going at the time she struck you?

A. Yes, after I came on board then I heard she was going faster than 14 knots; she was coming very fast; as soon as we saw him he was a little over here (indicating), and then he was coming so quick all the time.

Q. Did you notice anything about the speed of the *Saginaw* before the collision?

A. Yes; I looked over the side when I came up and I had a walk around, to see what kind of speed she was making, and I saw we were going very slow through the water. Five or six miles, or five or four miles, or something like that.

Q. After the collision which boat was got away first?

A. The starboard boat.

Q. What happened to that boat?

A. That capsized.

Q. Who had charge of the starboard boat?

A. The second mate.

Q. Were there any passengers in it?

A. Yes, sir, all the passengers went in that boat.

Q. What was the next boat that was lowered?

A. The port boat.

Q. Who got into that?

A. There was seven passengers and some men, there was one woman I believe; I got in that.

Q. And that safely got out to the *Hamilton?*

A. Yes.

Q. Was there any other boat there?

A. Yes, but then the ship was going down, and we had no time to get that out.

96 Q. Where was the third boat?

A. On the starboard side—no, on the port side.

Q. The third boat?

A. Yes; the biggest boat we had, we didn't get that.

Q. Was that astern, did that go off with the stern?

A. Yes.

Cross-examined by Mr. MYNDERSE:

Q. I want to ask you about the time between the whistles of the *Saginaw*. Suppose there was one whistle blown at the time that I drop this knife; will you let me know when the next whistle would come (dropping knife).

A. I think about this time again (indicating 20 seconds).

Cross-examined by Mr. PUTNAM:

Q. Had you ever stood lookout on the *Saginaw* before this time?

A. Yes, sir.

Q. What had been your duty from 8 o'clock to 12 the night before the collision?

A. I had been lookout from 8 to 10 and wheel from 10 to 12.

Q. Where was the vessel when you went on lookout at 8?

A. I can't state that, but we [illegible]at from Norfolk at 6 o'clock or half-past.

Q. Had you got outside the Capes when you went on lookout?
A. Yes, sir—I don't know, I am not acquainted down there; I have never been there before.
Q. Do you remember passing a lightship?
A. Yes, we passed two or three that I sung out for.
Q. That was while you were on lookout?
A. Yes.
Q. While you were at the wheel what course did you steer?
A. I forget, we had different courses.
Q. While you were at the wheel between 10 and 12 what course did you steer?
A. We had many different courses in that time.
97 Q. Do you remember any of them?
A. No, sir; I never took any notice of them.
Q. How often did they change the course between 10 and 12?
A. When we saw a lightship.
Q. How many lightships did you see between 10 and 12?
A. I didn't take so much notice of it.
Q. Did you see as many as two?
A. No, we passed more lightships than two.
Q. How many lightships did you see between 10 and 12; were there as many as two that you saw?
A. No, sir; I never looked to see.
Q. How do you know that they changed the course more than once?
A. They would sing out; they told me to steer another course.
Q. Who told you to steer another course?
A. The captain or the mate.
Q. Were they both in the pilot house at that time?
A. Yes, sir: the captain was in; he didn't stay there all the time; he was in and come back again and was sitting there smoking and would move around and come back again.
Q. Sometimes he would go in his room and then out again?
A. Yes, sir.
Q. Did the mate give you any orders to change the course?
A. Yes, sir.
Q. What courses did you have at any time that you remember?
A. No, sir; I can't remember that.
Q. Can you remember any course at all?
A. No.
Q. Do you remember meeting any vessels between 10 and 12?
A. Yes, sir: I cannot say but I believe we met some.
Q. Was it foggy between 10 and 12?
A. No, sir, it was clear weather.
Q. Perfectly clear was it between 10 and 12?
A. Yes, sir; perfectly clear.
98 Q. When you left the wheel at 12 o'clock who relieved you?
A. That was an Austrian.
Q. What course did you give him when he relieved you?

A. I forget that; I can't say that.
Q. Did you turn in?
A. Yes, I turned in.
Q. Up to that time had the whistle been blown at all?
A. No, sir; we had clear weather all the time.
Q. Did you go to sleep after that?
A. Yes, sir; I went down and went to sleep.
Q. How soon did you hear any fog whistle?
A. I can't tell that.
Q. Do you remember hearing it while you were below?
A. No, sir; I am not sure of it.
Q. You are not sure of having heard any whistle up to four o'clock?
A. No, sir.
Q. When you came up at four o'clock did you again stand lookout?
A. Yes.
Q. How many men were there in your watch?
A. Two.
Q. You and the Austrian?
A. No, I and the Russian.
Q. What did you call him on board the ship?
A. I don't know his name, I only was with him a couple of days.
Q. Didn't you call him by some name?
A. I believe Charlie was his name.
Q. How old was he?
A. Oh, he was about 33 or something.
Q. When you went on lookout at four o'clock what part of the ship were you on?
A. The forecastle head.
Q. Was that a flush forecastle head or is it raised?
A. Yes, that is raised 5 or 6 feet above the deck.
Q. Did you stay there all the time?
A. Yes.
Q. Had you heard any other whistle after you got there, except the whistle of the *Hamilton?*
A. No, sir.
99 Q. How many times did you hear that in all before the collision?
A. It was three times—two times before the collision and when he struck us that was another.
Q. So that you only remember twice before they came in sight?
A. Yes.
Q. When you first heard it it seemed to you to be on which bow?
A. The port bow, may be a point.
Q. How did you report it, what did you say?
A. I sung out "Steamer on the port bow, sir," that was what I sung out.
Q. How soon after that did the captain come on the forecastle-head?

A. He came immediately, just when I sung out; he came from the wheelhouse; he was standing in the window.

Q. Did he have to come down on the main deck?

A. No, sir; he came up to talk with me on the forecastlehead.

Q. What did he say?

A. He asked if I could locate that whistle, where I thought I had it, and he told me to take notice the next time it was blown and I said "All right," and then we heard it again and I said "That is on the port bow, sir," I said; and then he sung out to port the wheel, port the helm.

Q. Did he say anything when you said it was on the port bow?

A. Yes, then he heard it just as well as I did.

Q. Did he say anything to you?

A. No, sir, he didn't talk anything to me.

Q. Was there anybody else on the forecastlehead besides you and the captain?

A. No, sir.

Q. How soon after the second whistle did she come in sight?

A. That would not be more than a minute.

Q. When she came in sight which bow was she on?

A. On the port.

100 Q. On your port bow?

A. Yes, sir.

Q. How much?

A. Four or five points.

Q. You had already changed under your port helm at that time?

A. Yes.

Q. How long was the order to port the helm before she came in sight?

A. Oh, that was only a couple of minutes.

Q. Did you stay on the forecastle head until the collision?

A. Yes, sir; then after the collision I stopped up there.

Q. You didn't go aft at all?

A. No, not before the *Hamilton* was out of sight.

Q. Was there any other lookout stationed on the *Saginaw* except you?

A. No, sir; not that morning.

Q. Not at that time?

A. No, sir.

Q. You were on the forecastle head alone, lookout on both bows?

A. Yes, sir; and the captain was alongside of me from that time till she struck.

Q. Had the captain come out to you before the time of this whistle?

A. Yes, he came the first time I reported.

Q. But previous to that had he been out on the forecastle head, before the whistle?

A. No, sir; he was standing there.

Q. How long had you been standing on the lookout when you heard this whistle?

A. May be, I think about a little more than half an hour.

Q. Had you reported any whistle in that time?
A. No, sir.
Q. When you first heard the *Hamilton's* whistle was it loud and distinct?
A. No, I can't say it was, very—yes, I heard it very well.
Q. It was a regular blast, was it?
A. Yes, sir, only one blast I could hear. It was a steam whistle; I could hear that it was a steam whistle.
Q. How much higher was the pilot house than the forecastle head?
A. About level; may be the pilot house was a little higher.
Q. Can a man in the pilot house see over the forecastle
101 head?
A. Yes.
Q. Did you have to go up any steps to go from the deck to the pilot house?
A. Yes, the deck was lower, about nine or ten steps, I think, maybe a little more.
Q. Which boat was it that you went in from the *Saginaw?*
A. I went in the starboard boat.
Q. Was the captain in that boat?
A. No, sir.
Q. Who was in charge of the boat?
A. The second mate.
Mr. WARD: I think he misunderstood you.
Q. Which boat did you go on to the *Hamilton?*
A. In the port boat.
Q. Did you go from one boat to the other?
A. Yes.
Q. The first boat you got into was which boat?
A. It was the starboard boat.
Q. Was that swamped?
A. No, sir, not as long as I was in the boat; it was all right.
Q. Why did you get out of that into the other boat?
A. I jumped; the boat was overloaded with passengers and there were three of the crew and second mate.
Q. How many men were there in the boat altogether?
A. There was all the passengers jumped in the first boat.
Q. How many people?
A. I can't say that.
Q. Was it 10 or 20?
A. No, it must be nearly 20, maybe over that, too.
Q. Was that boat afterwards swamped?
A. Yes, but I didn't see that.
Q. You got out of it before it swamped?
A. Yes, I got hold of the boat tackle and got on board of the vessel again.
Q. Then after you got back on the *Saginaw* you got into another boat?
A. Yes, sir.

102 Q. How long was it before the *Saginaw* sank?
A. Oh, 13 or 20 minutes, or something like that, I believe.
Q. Did all the people get into the boat or did some go up in the rigging?
A. Yes.
Q. Who went up in the rigging?
A. The captain went up in the rigging and some of the passengers and some of the crew.
Q. During all the time you were on the *Saginaw* were there only two men in your watch?
A. Yes.
Q. Was that the same in the other watch?
A. Yes.
Q. And there were only four men on the steamer?
A. No, six, one was a watchman.
Q. He wasn't a seaman, was he?
A. Yes, sir.
Q. What was his duty?
A. He had been on board the ship and got a better job; he had nothing to do and then he came on board and fixed the lights.
Q. Just to go around the ship and keep watch?
A. To look after the lights.
Q. How many watchmen were there?
A. There was one and the other man was working day times, and slept nights.
Q. Was he a sailor man?
A. Yes, he was a sailor man.
Q. What did he do in the day time?
A. Painting and splicing, and every kind of thing.
Q. So that at night time there were only two sailors in each watch on duty?
A. Yes.
Q. How long did you stand on the lookout regularly?
A. Two hours.
Q. And then two hours at the wheel?
A. Yes.
Q. Did the wheel steer by steam or by hand?
A. By steam.
Q. When you were at the wheel from ten to twelve who was in the pilothouse besides the captain?
A. The mate.
103 Q. Which mate?
A. The chief mate.
Q. Then after twelve o'clock what officer was in the pilothouse?
A. I don't know that: I went to sleep at twelve o'clock.
Q. Do you know what officer answered you "All right" when you reported the steamer?
A. Yes, sir, that was four o'clock in the morning.
Q. Who was that?
A. That was the chief mate.

Q. So he was in charge at that hour?
A. Yes, sir.
Q. Are you still with the Clyde Line?
A. No, sir; I have not been with them since that time.
Q. You have been paid off?
A. Yes.
Q. What are you doing?
A. Nothing at the present time.
Q. You are ashore?
A. Yes.
Q. You haven't any job now?
A. No, but I am going to have some.
Q. What are you going to have?
A. Oh, I don't know what; I am going to work ashore for the summer, I think.
Q. You haven't any job engaged?
A. No.

Redirect examination by Mr. WARD:

Q. Was the chief mate in charge from 12 to 4 and also from 4 to 8?
A. No, sir; he couldn't be that.
Q. Who was in charge from 12 to 4?
A. That must be the captain or the second mate.
Q. When you went on duty at 4 A. M., were you called up?
A. Yes, I was to go on lookout.
Q. You had been asleep and he woke you?
A. Yes.
Q. How long had you been asleep?
A. Four hours.
Q. Since you turned in?
A. Yes, since I turned in.

104 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY for Limitation of Liability.

Depositions on behalf of the Clyde Steamship Company, taken pursuant to notice at the office of Messrs. Robinson, Biddle & Ward, 79 Wall Street, New York, July 1st, 1903.

Present:

Harrington Putnam, Esq., for The Old Dominion Steamship Company.
Wilhelmus Mynderse, Esq., for Underwriters.
H. C. Ward, Esq., for The Clyde Steamship Company.

It is agreed that the testimony of the witnesses taken on behalf of The Clyde Steamship Company may be taken stenographically, and the notes, when transcribed, be used by either party in either or both cases with the same effect as if the witnesses had been examined under Section 863.

105

Signing waived.

JAMES S. TUNNELL, being duly sworn and examined as a witness on behalf of the Clyde Steamship Company, testifies:

By Mr. WARD:

Q. Where do you reside?
A. Philadelphia.
Q. Have you come over to testify in this case?
A. Yes, sir.
Q. How long have you followed the water?
A. I have followed the water about forty years.
Q. On the 5th day of May, 1903, what was your position?
A. My position was master of the steamship *Saginaw*.
Q. What papers did you have as master?
A. I had an ocean steamship master's license.
Q. With pilot's license from Boston?
A. Pilot's license to Delaware and Chesapeake Bay and tributaries.
Q. What are the general dimensions of the *Saginaw?*
A. She was 1429 net tons; 1835 gross; 238 feet long and 36 or 38 feet beam, I believe.
Q. Do you know her depth of hold?
A. No, I don't.
Q. What was she made of?
A. Iron.
Q. Tell us what houses were on her upper deck, beginning at the stern; had you a turtle back there?
A. A turtle back aft, yes, sir.
Q. Then what next?

A. Then we had another house extending to nearly one-third of her length, and then there was an engineroom, gal-

106

ley, and storeroom, and then came the pilot-house and the other rooms. There were rooms below on the main deck; several staterooms down below on deck; the mate's room, second mate's chief engineer's rooms below.

Q. The pilothouse was on top of that?
A. Yes, sir; the pilothouse was on top of that.
Q. Forward of the pilothouse what was there?
A. There was nothing excepting the hoisting engines.
Q. Was the forecastlehead elevated above the deck?
A. Yes.
Q. How far?
A. About five feet.
Q. Do you recollect what time you left Norfolk on the 4th of May, 1903?

A. About 6.30 P. M.
Q. What was the state of the tide?
A. Ebb tide.
Q. What is the usual full speed of the *Saginaw?*
A. Her normal speed at sea is about nine and a half, sir.
Q. That is her full normal speed?
A. Yes, sir.
Q. Did the ebb tide help you after leaving your wharf?
A. Yes.
Q. How far did you carry the ebb tide?
A. We carried the ebb tide towards Cape Henry.
Q. Have you any idea how much that added to your normal speed?
A. Nothing more than a knot.
Q. Do you know what time you arrived at Cape Henry?
A. 9.17—what we call Cape Henry, the whistling buoy.
Q. What was the next point that you know your time of arrival at?
A. The next point was Cape Charles lightship.
Q. When did you get her abeam?
A. 10.42 P. M.

Q. Let me ask you whether any of the logs or records of
107 the *Saginaw* were saved from the wreck?

A. No, sir; nothing at all.
Q. These times you give from memory, do you?
A. Yes, sir.
Q. When did you turn in?
A. I turned in at 12.30 A. M.
Q. What was the weather at that time?
A. The weather was fine.
Q. Under what speed were you going?
A. We were going then about 10 knots; in the neighborhood of that or nine and a half.
Q. Going full speed?
A. We were making about nine and a half.
Q. Is that full speed?
A. Yes, sir; that is her normal time.
Q. When did you come out again?
A. I came out at 1:45.
Q. What brought you out?
A. I heard the mate blowing his fog whistle.
Q. When you came out how did you find the weather?
—. I found there was a light fog, but not foggy enough to cause me to slow down.
Q. What did you do with your whistle from that time on?
A. We kept it going occasionally; we kept it going.
Q. When did the fog become dense?
A. About four o'clock.
Q. Where were you then?
A. I was in the pilot-house.
Q. Did you give any orders with reference to that fog then?

A. No, sir; not right at that time.
Q. Did you afterwards?
A. Yes, sir.
Q. What were the orders?
A. About 4:10 I told the mate to call down to the engineroom, to the engineer on watch, and tell him to slow his engines down and run his steam down, that I would probably want to stop.
108 Q. What did you have in mind stopping about?
A. Probably I would want to stop and listen for Winter Quarter Lightship.
Q. Why couldn't you stop unless the steam was run down?
A. One reason, sir, she always blows off so—when we are running with a full head of steam and slow her down, she always blows off so that you can't hear anything while she is blowing off.
Q. Do you know whether the mate did give those orders?
A. Yes, sir.
Q. Were you in the pilot-house?
A. Yes, sir.
Q. And heard him?
A. I heard him.
Q. Have you any way of knowing whether the orders were obeyed in the engineroom?
A. I heard the engineer answering at the time and I could feel the difference in the vibration of the ship.
Q. What has become of the first mate?
A. He is drowned.
Q. Was he a licensed officer?
A. Yes, sir.
Q. What is the next thing of any importance that you heard or did?
A. About 4:40 the lookout reported hearing a whistle; and the mate reported to me that he heard a whistle.
Q. Had you heard it?
A. No, sir, I hadn't heard it.
Q. What did you do then?
A. I told the mate I would go up on the forecastle deck and see if I could locate the whistle.
Q. Was there anything said about whereabouts the whistle was that they heard?
A. They said it was nearly ahead or a little on the port bow or half a point on the port bow.
Q. Did you go forward?
A. I went forward.
Q. What took place then?
A. After I got forward I heard the whistle.
109 Q. Where did you hear it?
A. I heard it on the port bow.
Q. Did you estimate how far on the port bow?
A. I judge nearly a point on the port bow; from half a point to a point on the port bow.
Q. What did you do?

A. I told the mate to port.
Q. What was the next thing?
A. In about a minute I saw the loom of the *Hamilton* and then I told him to hard aport.
Q. You sang out to the mate?
A. Yes, sir; I sang out to the mate.
Q. Whereabouts did you see the loom of the *Hamilton?*
A. She was on the port bow.
Q. That was the last whistle you heard of the *Hamilton* that you have told us about?
A. No, sir; I heard her whistle when she went along past.
Q. You heard her whistle as she went past?
A. I could see her then and see she was blowing a whistle and I heard her too, then.
Q. What blast was she blowing then?
A. She was blowing one long blast.
Q. Did you see the *Hamilton* strike the *Saginaw?*
A. Yes, sir.
Q. Did you have any estimate of the *Hamilton's* speed?
A. It looked to me she was going ten miles an hour.
Q. Where did she strike the *Saginaw?*
A. She struck her on her port quarter.
Q. Do you know with reference to any fixed object whereabouts it was?
A. No, sir.
Q. Did she strike the after-house at all?
A. She seemed to cut the back part of the house right off; I didn't get aft to see myself.
Q. After the collision what did the *Hamilton* do?
A. She went right on past us.
Q. She didn't back out from you?
A. No, sir.
Q. Went right on past?
A. She went right clean clear of us, sir.
110 Q. Did you hear any signal at all from the Winter Quarter lightship before or after the collision?
A. No, sir.
Q. You know the signal?
A. Yes, sir.
Q. You would recognize it?
A. Yes, sir.
Q. When you heard the whistle of the *Hamilton* on your port bow, why didn't you stop your engines?
A. I didn't think it was good judgment to stop her at that time.
Q. What was your theory on which you were acting in not stopping?
A. She seemed to be so close to us and then I was only under half speed and she was reported on the port bow, and I told the wheelman to port and I was naturally going away from her.
Q. You thought keeping up your speed and porting was the safest thing to do?
A. Yes, sir.

Q. In that location had you any idea whether the signal was being blown by a vessel coming down the coast or heading in?

A. They would have been different if he had been going in.

Q. Is it a location where steam vessels are likely to head in across your course?

A. No, sir.

Q. What is the usual course down there?

A. SW. by S., below the lightship.

Q. Do you know what your course was?

A. We were NE., three-quarters north.

Q. That is the usual course up and down?

A. Yes, sir.

Q. When the collision had taken place, what did you do?

A. After it was over—I was on the forecastle head when it was done—and I ordered the mate to go aft and ascertain the damages.

Q. That is the first mate?

A. Yes, sir.

Q. Who was on deck at the time of the collision?

A. There was no one on deck of the crew as I know except me and the lookout; the second mate was turned in; the first mate
111 was in the pilot house; and the second mate came out just as the collision occurred, or a little before or about that time.

Q. Therefore all the people that were on deck before the collision were you, the first mate, the wheelman, the lookout and the second mate?

A. That is all the crew, except probably there might have been a fireman on deck for something or other; there might probably have been somebody about the deck, a passenger or something. I don't know whether there was or not.

Q. Did you see anybody on the deck to know them?

A. I didn't pay any particular attention to anybody else when the collision occurred.

Q. After you ordered the mate to go and see the damage, did he make any report to you?

A. No, sir.

Q. What did you do next?

A. I see the cargo was coming out and the ship was settling and I didn't wait to get any report from him—I went around on the starboard side. I went to the port side, the side she struck, and I started aft. I didn't get aft because I saw the cargo was coming out and the ship was settling. I went on the starboard side and the second mate was around there and was getting a boat down. I ordered the boats to be lowered as soon as I saw the cargo was coming out.

Q. Did you see the second mate lower a boat there?

A. Yes.

Q. Did you see what happened to it?

A. I saw that we had got the passengers in the boat, but I didn't see her when she capsized, because after we got all the women passengers in the starboard boat I went on the port side and looked after the port boat and I didn't see her when she capsized.

Q. Who got down the port boat?

A. The third assistant engineer and the mate was around there.

112 Q. Did you see that boat get off?

A. Yes, sir; I saw the port boat get off safely.

Q. Then what did you do?

A. Then it was beginning to get pretty short times with us around there. The water was getting all over our deck so that we jumped to her third boat, me and the mate and the chief engineer, and we tried to get her down, but we were compelled to leave her and take to the mast; we couldn't get her down.

Q. Who was drowned of your officers?

A. The first mate and the first assistant engineer were drowned; the steward was drowned.

Q. Then you got into the rigging, did you?

A. Yes, sir; I got into the rigging.

Q. Did you suffer any personal injuries?

A. Yes, sir.

Q. What were they?

A. My side.

Q. Which side?

A. My right side, sir.

Q. How did you get saved?

A. I was taken off from the mast head in one of the Old Dominion boats.

Q. That is after the ship had entirely sunk?

A. Yes, sir; she was entirely sunk and I was on the mast head. I had just my head out of water on the mast head, standing on the rigging.

Q. What was the state of your health after you landed at Norfolk?

A. Very poor, sir; they took me to the other boat in a cab from the Old Dominion boat to the Cape Charles boat.

Q. And then you came back to Philadelphia?

A. Yes, sir.

Q. What was the condition of your health there in Philadelphia, when you got there?

A. I was very bad.

Q. Were you laid up for a length of time?

A. Yes, sir; I have been laid up till last Monday a week; I haven't been out doors but about three times and that was during that time.

113 Q. What were you suffering from?

A. Nervous prostration and my side.

Q. Nervous prostration and injury to your side?

A. Yes, sir.

Q. Was there anything broken in your side?

A. No, sir; it wasn't broken, the doctor didn't pronounce it broken, but I never can think of how the doctor pronounced the side, but the ribs were not broken.

Q. The ribs were injured?

A. Yes, sir; the ribs were injured.

Q. Was the first assistant engineer, who you say was lost, on watch at the time of the collision, or was he off duty?

A. He was on duty at the time of the collision; he was lost.

Q. Did you make any estimate of the speed of the *Saginaw* at the time of the collision?

A. Yes, sir.

Q. What do you think her speed was?

A. I presume her speed was not more than five knots an hour.

Q. How do you calculate that; what observation was there?

A. I judge from the motion of the ship and the water; I looked at the water; I can judge by the water how fast she was going.

Q. And you had taken some observation of that at the time, had you?

A. Yes, sir.

Q. Do you know whether your engines were stopped after the collision?

A. They stopped at the very moment the collision occurred.

Cross-examination by Mr. PUTNAM:

Q. At the moment the two vessels struck where were you standing?

A. I was standing on the forecastlehead.

Q. Which side?

A. Port side.

Q. So you were probably a long distance off from the
114 point of contact? The point of contact was very near the stern.

A. Yes, sir.

Q. You must have been then some 200 feet or more away from there?

A. Yes, sir.

Q. Was it quite dark at the time?

A. No, sir; it was foggy.

Q. How was it as to seeing objects in respect of daylight?

A. It wasn't daylight; the day was just beginning to break.

Q. Was it what you call a dense fog?

A. Yes, sir.

Q. How far away did you think the *Hamilton* was when she first came in sight of you?

A. I should judge she was maybe 300 feet or probably a little more.

Q. That is only about a ship's length?

A. Yes, sir; or a little over that.

Q. And you were looking out as sharp as you could for her?

A. Yes, sir; I was very near a hundred feet nearer to her there on the forecastlehead than I would have been in the pilot house.

Q. When you say a ship's length or 300 feet, you mean from where you stood, don't you?

A. Yes, sir.

Q. Had you already given the order to port the *when* before you saw anything of the *Hamilton?*

A. No, sir.

Q. You hadn't?

A. No, sir.

Q. Then you didn't give the order to port the wheel until after you had seen the *Hamilton,* is that right?

A. Yes, I gave orders before I saw the *Hamilton.*

Q. That is just what I asked you. I will repeat the question. Did you give the order to port the wheel before you saw anything of the *Hamilton?*

A. Yes, sir.

Q. Then you gave the order to port the wheel when you had only heard a whistle?

A. Yes, sir.

115 Q. And when you saw her you had already been under the influence of a port helm?

A. Yes, sir.

Q. Have you any idea how much you had changed between the time you gave the order and the time you saw her?

A. No, sir, I haven't—how much she changed.

Q. As much as two or three points?

A. Probably she had, a point or more.

Q. Do you know whether there was any order given after you saw the *Hamilton* to the engines to reverse or to stop or anything of that kind?

A. No, sir.

Q. You don't know?

A. There was no order.

Q. Of course you were not in the pilot-house—but you didn't give any order?

A. No, sir.

Q. Don't you think it would have been a prudent thing to stop your engines instead of going ahead after the *Hamilton* came in sight?

A. No, sir.

Q. Why not?

A. I think if I had the collision would have been much worse; I think if I had stopped her the *Hamilton* would have struck the *Saginaw* near amidships.

Q. If you stop and reverse your engines, how long a distance will the *Saginaw* forge ahead before she comes to a standstill?

A. It will give her her length anyhow; the *Hamilton* would have struck her right amidships.

Q. Wouldn't the Saginaw, if her engines were reversed full speed, forge ahead a good deal more than a length?

A. Yes, sir, probably she would, if she had been going full speed.

Q. Take the speed that she was on, wouldn't she forge ahead two or three lengths, loaded as she was?

A. Probably she might have done, yes, sir.

Q. You never have experimented with that accurately, I suppose?

A. No, sir, not exactly; yes, she would have gone two

116 lengths, because she was a great vessel to hold her headway?

Q. If she was at full speed and you reversed her engines, you couldn't check her under several lengths, could you?

A. No.

Q. About how many do you think?

A. If she was under full speed, give her four bells, she would go twelve times her length before she was stopped dead.

Q. I didn't think you told us what your draft was on this voyage? What was she drawing?

A. She was drawing about 14 ft. 10 and about 11; but I can't say positive; but that is about what I should judge.

Q. You mean 14 ft. 10 or 11 aft?

A. 14 ft. 10 aft and 11 forward.

Q. You mean 11 feet forward?

A. Yes, sir.

Q. She would be trimmed a good deal by the stern?

A. Yes.

Q. Is that the usual way that you have her?

A. Not at all times; many a time we can't help it; it is according to what amount of cargo we have got in.

Q. Did she have a full cargo at this time or only a partial cargo?

A. No, sir.

Q. What is her full draft, fully loaded?

A. 17 ft. aft; 16 ft. forward.

Q. You stated that you were expecting soon to make the Winter Quarter light vessel and you wanted to listen to her fog signal. Do you know what that fog signal is?

A. Yes, sir.

Q. What is it?

A. It blows three once—the first time it blows three seconds, and then at intervals of 59 seconds, and it blows again three seconds, and an interval of sixty seconds; and that is the way it keeps on blowing all the time—one whistle all the time.

Q. Is it a coarse, deep whistle or a sharp whistle?

A. It is not a coarse whistle, no sir.

117 Q. Have you any reason to think that you heard that blast before the collision?

A. No, sir.

Q. Did you hear it after the collision?

A. No, sir.

Q. Do you know what the distance is from the Cape Charles lightship up to the Winter Quarter lightship?

A. 57 miles.

Q. That is according to the course that you follow, or is that the exact distance measured on the chart?

A. That is about the distance measured on the chart.

Q. The course that you follow, is it perhaps a little more than that?

A. Probably it might be a little more.

Q. When you stated the time that you passed the different objects, you state that from memory?

A. Yes.

Q. You have got no record at all?

A. No, sir, nothing at all.

Q. Of course, if a man had a record he would be more exact than a man who speaks from memory?

A. Yes, sir; it might be; but that is correct.

Q. If the man at the Cape Charles lightship has got a record in his book of the time you passed, that would be a record made at the time that might be more accurate than your recollection now after this sickness? Isn't that so?

A. Yes.

Q. When you left Norfolk at 6.30 P. M.—do you back out from the slip or do you go out bow first?

A. Go out bow first.

Q. You don't give her full speed in the Elizabeth River there, do you?

A. No, sir.

Q. About how far down do you go when you ring up to full speed?

A. We generally go down as far as what we call the Hospital Wharf; it takes five minutes.

Q. Do you give her full speed before you get to Lambert's Point?

A. Yes, sir.

118 Q. And from that time on she continued at full speed until this later time that you spoke of?

A. Yes, sir.

Q. Do you say that at sea, loaded as you were, she will average about 9½ knots?

A. Yes, sir.

Q. It is a fact, isn't it, that you averaged 9½ knots from the time of leaving your wharf up to the time of the collision?

A. No, sir; I don't think we averaged that up to the time of the collision.

Q. Didn't you testify that way before the inspectors in Philadelphia last week—that you did average 9½ knots?

A. Up to the time of the collision?

Q. Up to the time of the collision. I will read to you from the minutes of your testimony taken before the Inspectors at Philadelphia last Friday, June 26th, from page 3:

"Q. Did you average 9½ knots from the time you left the pier up to the time of the collision? A. Yes, sir.

Q. You did not make over that up to the time of the fog? A. We didn't average any more than that at times, but coming out of Cape Henry, where we had a strong tide, we made a little more."

Q. Did you testify that?

A. Yes, sir.

Q. And that was correct, wasn't it?

A. Going out of Cape Henry, yes sir.

Q. The other testimony that I read you intended to be correct?

A. I gave orders at 4:10 to slow her down, and they slowed her down at 4:10.

Q. But the question is what you averaged over the whole distance from leaving Norfolk up to the place of the collision?

A. Yes, sir; that is about her average time; 9½, yes, sir.

Q. When you turned in whom did you leave in charge of the deck?

A. Left the first officer.

Q. Who was with you in the pilothouse before twelve o'clock?

A. The second mate.

119 Q. What was his name?

A. Mr. Morris; William H. Morris.

Q. What was the name of the chief officer?

A. Edward S. Goslee.

Q. Is he the man that was lost?

A. Yes, sir.

Q. What kind of a fog whistle arrangement does the *Saginaw* have? Does she have a lanyard that you pull in order to blow the whistle?

A. Yes, sir; it runs across the pilot house and out.

Q. Does the duty of blowing the whistle fall on the officer who is in the pilot house in charge?

A. Yes, sir.

Q. So that after the fog came on Mr. Goslee blew the whistle?

A. Yes, sir.

Q. He had also to attend to his other duties in charge of the ship?

A. He stands right in the pilot house, just stands right in the window, and it comes right down.

Q. That is, he just pulls a string?

A. Yes, sir.

Q. When was it that you first heard that whistle blown?

A. About 4:40.

Q. Didn't you come out at 1:45, hearing the whistle blowing?

A. Yes, sir; that was the time—1:45—when I came out.

Q. That time you had been asleep, hadn't you?

A. I hadn't been below but a very few minutes, a very short time.

Q. What time was it that you turned in?

A. It was near one o'clock when I turned in.

Q. What time was it, about, when you left the pilot house and turned in to your room?

A. Near one o'clock.

Q. Wasn't it 12:30?

A. It was 12.30 when I called him; but it always takes some time to get out; never in such a hurry as to go right off and turn in.

Q. And after you turned in you went to sleep, didn't you?

A. I suppose I got to sleep; that is about all.

120 Q. Did you take off your clothing?

A. Yes, sir; part of them.

Q. And got into your berth?

A. Yes.

Q. Of course you don't know how long the whistle had been sounding when you woke up?

A. It never sounds but a very few times before I wake.
Q. And when you came out then was Mr. Goslee blowing it?
A. Yes, sir.
Q. And blowing it at intervals of a minute each?
A. About a minute.
Q. Did he keep it going at intervals of about a minute right along?
A. Most of the time, yes, sir.
Q. You said in your direct testimony he kept the whistle going occasionally; what did you mean by that?
A. At times the fog wouldn't be so—it would be all clear, everything, pretty near; it might be then two or three minutes that we wouldn't blow it quite so often.
Q. How often would it be sounded then?
A. It would be sounded just whenever we couldn't see far enough to clear anybody.
Q. You know in the night time it is somewhat hard to tell. Would the officer exercise his own judgment about that, or would you tell him to blow?
A. He exercised his own judgment; I have known him to blow a whistle of a dark night many a time, when it was very dark.
Q. Without regard to fog?
A. Yes.
Q. If it was raining, you sometimes do that?
A. Yes.
Q. It wasn't raining this night?
A. No, sir.
Q. But there were intervals when the fog was quite thick?
A. Yes, sir; but not so but that we could always see; none of the time but what we could see far enough to clear anybody.
Q. Were there times when the fog whistle would stop as much as ten or fifteen minutes?
A. No, sir.
121 Q. What was the longest time that the whistle was interrupted or stopped during that time?
A. I couldn't positively tell exactly the minutes, but it was but very few minutes.
Q. As long as ten minutes would they stop?
A. No, sir; never stop ten minutes.
Q. You didn't stay out, did you, from 1.45 on till the collision?
A. Yes, sir.
Q. All the time?
A. Yes, sir.
Q. You were in the pilot house?
A. Yes, sir.
Q. You didn't come out of the pilothouse at any time except after you heard this whistle?
A. No, sir. Well, probably I might have come out maybe on the bridge a minute or something like that; but I don't remember about anything like that.
Q. Which side of the pilothouse did you stand on?

A. On the port side.
Q. Did you have an open window there?
A. Yes, sir; we had the open windows all the way across.
Q. Were they all open this night?
A. Yes, sir.
Q. Where did the chief officer stand?
A. He stood on the starboard side of the wheel.
Q. Do you have steam steering gear?
A. Yes, sir.
Q. And you also had a quartermaster at the wheel?
A. Yes.
Q. Did you hear the sound of any whistle, of any vessels, before you heard this whistle of the *Hamilton*, during this fog?
A. No, sir.
Q. Did you make a calculation of how long it was going to take you to make the run from Cape Charles to Winter Quarter?
A. I judged we ought to be up to Winter Quarter lightship probably a few minutes after five o'clock.
Q. That is what you estimated?
A. Yes, sir; I estimated it.
122 Q. Why should you, at 4.10, begin to stop to listen for it when you were an hour away from it?
A. It was a fog that was so dense then that I didn't want to go fast anyhow; that is why I gave the orders to slow down.
Q. You were still fully an hour before you expected to reach it?
A. Oh, yes, sir.
Q. Then really your object of listening for the light vessel was something later on? You didn't expect to listen for it at this time?
A. Oh, no, sir; just making preparations for it.
Q. According to your calculations, how far away were you from the light vessel at 4.10? I suppose you pricked out the place on the chart that you thought you were on?
A. I should judge at 4.10 we was in the neighborhood of ten miles, I thought, from the lightship.
Q. Had you examined the chart about that time?
A. No, sir.
Q. You are pretty familiar with the distances and places without a chart?
A. Yes, sir.
Q. Had you been running a straight course all the way from Cape Charles?
A. Up to four o'clock.
Q. What was the course before four o'clock?
A. NE ½ N.
Q. Is there a correction of that on account of your local compass?
A. Yes, sir.
Q. What is the magnetic?
A. It is about NE ¾ N, I believe, or NE by N; something like that; I don't remember now what it is.

Q. That is a little correction?
A. Yes, sir.
Q. Do you remember which way the correction is?
A. That is according to the weather and the wind and such things.
Q. But running on this course and recording your compass, which way is the deviation?
A. It is to the westward and northward.
123 Q. Suppose you are heading N. E. ½ N.; what would be your real magnetic direction?
A. It would be N. E. ¾ N., the true course.
Q. At four o'clock you changed, and what was the direction then?
A. N. E. ¾ N.
Q. And corrected, what would that be?
A. That would be about N. E. by N.
Q. So there is about a quarter of a point correction to the compass?
A. Yes, sir.
Q. At that time, four o'clock, how was the fog?
A. At four o'clock the fog set in dense.
Q. By dense you mean that it was what you would call thick?
A. Yes, sir.
Q. And thicker than it had been?
A. Oh, yes; thicker than it had been.
Q. And it continued from that time thick until the collision?
A. Yes.
Q. Didn't change very much after four o'clock?
A. No, sir.
Q. About what time was it, according to your clock then, the collision occurred?
A. At 4.45.
Q. You first heard the *Hamilton's* whistle about 4.44 or 4.43?
A. 4.41 or 4.40.
Q. You don't mean that you heard the whistle four minutes before the collision?
A. Yes, sir.
Q. You think you did?
A. Yes, sir.
Q. The whistle was reported by the lookout before you heard it?
A. Yes, sir.
Q. And then you heard it out on the forecastle head, and then you heard it again after the steamer came in sight; is that right?
A. No, sir. Well, that was after I could see the steamer; that was the last whistle she blew.
Q. That was when she was in sight?
A. One long whistle.
Q. Very near to you then?
A. Yes.
Q. Weren't all the whistles long whistles?
A. No, sir.

124 Q. What were the other whistles?

A. There was a difference. The last whistle she blowed when she was abreast of us was just one steady long whistle.

Q. How long do you think that was in seconds?

A. He was blowing—I couldn't tell, but he just got hold of the whistle and kept it going all the time; he saw he was going to have the collision, and he kept his whistle going.

Q. That was after he came in sight?

A. Yes.

Q. Was that as much as ten seconds or half a minute, or how long—that that final blast of the whistle was given?

A. I suppose in the neighborhood of ten seconds, or something like that, five seconds, he kept it going; he was right abreast of us then; I could see him then all plain, when he was blowing that whistle.

Q. Did you give any order to starboard the helm?

A. No, sir.

Q. You kept the helm hard aport as far as your orders went, all the time; is that right?

A. After I gave the last order—the first order I didn't give hard aport; the last order I gave hard aport.

Q. When you went forward on the forecastle head and left the pilot house you didn't give any order then to the man at the wheel as you came out of the pilot house?

A. No, sir.

Q. The first order you gave was after you got on the forecastle head?

A. Yes, sir.

Q. What was that order?

A. That was to port the wheel.

Q. Did you give any order hard aport?

A. Yes.

Q. When was that?

A. That was when I saw the ship, the *Hamilton*.

Q. And those two orders were all you gave?

A. Yes, sir.

Q. Don't you think in the position the vessels came to-
125 gether, that that last order was a mistake?

A. No, sir.

Q. If you had starboarded your wheel, wouldn't that have tended to throw your quarter away from the *Hamilton?*

A. No, sir.

Q. You think not?

A. No, sir.

Q. How did the two come together? At what angle? You know as a maritime man how many points?

A. I couldn't tell positively exactly how many points it was; but I should judge in the neighborhood of three points.

Q. Did you think that your vessel would go clear?

A. I had hopes till the last minute.

Q. When the first report was made of the fog whistle did you hear

the words that the lookout said when he first reported the *Hamilton's* whistle?

A. No, sir.

Q. Where were you at the time?

A. I was in the pilot-house.

Q. Were you at the window?

A. I was at the window on the port side.

Q. Isn't it a fact that you were at the back side of the pilot-house on a lounge?

A. If you was to the back side you couldn't be very far.

Q. But wasn't that where you were?

A. Not to the best of my knowledge, no, sir, I was not; I was looking out of the window, to my knowledge.

Q. Isn't it a fact that you had gone to the rear of the pilot-house and sat down there on a bench or lounge or something?

A. We don't have any bench.

Q. Isn't there a chair there?

A. There is a chair, yes.

Q. Weren't you in that chair?

A. That chair would move right up to the window.

Q. Weren't you sitting in the chair?

A. No, sir.

126 Q. Are you quite sure about that?

A. To the best of my recollection I wasn't.

Q. Your recollection is pretty good, isn't it?

A. I don't remember sitting down; it is something—I very seldom ever sit down.

Q. Isn't it the fact that you were not in good health at this time?

A. No, sir; I was in good health.

Q. Were you in good health when you left Norfolk?

A. Yes, sir; nothing the matter with me.

Q. I mean when you left Norfolk before the collision.

A. No, sir, nothing ailed my health then.

Q. You were all right?

A. Yes, sir.

Q. But you don't remember now whether you sat in the chair in the pilot-house that evening or not?

A. I don't remember, sir; I don't remember that I sat down; probably I might, but I won't say.

Q. You can't say positively?

A. I can't say positively; probably I may have.

Q. When the lookout did report the whistle did you hear what he said—that is, the words—at all?

A. No, sir.

Q. And you didn't, of course, hear the whistle?

A. I didn't hear the whistle.

Q. Did the mate tell you what he reported?

A. The mate told me he heard the whistle; he didn't tell me he heard him report.

Q. Did the mate tell you what the lookout reported, or did the mate tell you that he himself had heard the whistle?

A. The mate told me that he had heard the whistle.
Q. So he didn't tell you what the lookout had said?
A. No.
Q. What were the exact words that the mate said to you then?
A. He told me he heard a whistle.
Q. Did he say "I hear a whistle?"
A. "I heard a whistle."
127 Q. Did he say where he heard?
A. No, sir; he couldn't tell exactly where he heard it, somewhere near ahead, as near as he could tell.
Q. He said then "I have heard a whistle somewheres near ahead?"
A. Yes.
Q. When you went out didn't you think that was the whistle of the lightship that you wanted to locate?
A. No, sir.
Q. You didn't know what it was?
A. No, sir.
Q. Why did you go clear on to the forecastle head for just a report as that from the mate without having heard anything yourself?
A. I very often do; it is so much further; it is a hundred feet from the pilot house, or very near it, up to the forecastle head.
Q. Isn't this one reason: that the way you were trimmed that night, with such a load aft you can't very well see over the forecastle head from where your pilot-house was, and you get a better view by going up on the forecastle head right in front of the ship?
A. Yes, sir; in narrow work it would be much better up there, if it was narrow work.
Q. When you got there how long did you stand there before you heard any whistle?
A. Not more than a minute.
Q. Did you say anything to the lookout when you got there?
A. I don't remember I did.
Q. You didn't ask him what the whistle was or what he had seen?
A. No.
Q. When you heard it was it distinct and plain?
A. I have heard whistle much plainer, but I heard it.
Q. Did you form an opinion of what distance off it was?
A. No, sir.
Q. Couldn't tell whether it was near or far?
A. No, sir.
Q. That is often the case in fog, isn't it, that you can't
128 tell accurately whether you are close to it or whether it is half a mile off?
A. Very often the case. I have heard lightships an hour before I got up to them—ten miles.
Q. Of course, a lightship has got a peculiar whistle intended to have greater force; but in the case of a steamer's whistle that you are approaching, frequently you can't tell the distance off?
A. No, sir.

Q. When you did hear the whistle were you still standing on the port side of your boat?

A. Yes, sir.

Q. And where was your lookout standing?

A. He was standing near me; but I don't know whereabouts he was. I know he was on the forecastle head; he was there with me, but I don't know exactly how close he was standing to me; I know he was there.

Q. When the whistle sounded you judged it was pretty nearly ahead?

A. I judged it was a bit on the port bow, or nearly ahead; it sounded to me nearly half a point on the port bow.

Q. Of course half a point is pretty fine when you are locating a fog whistle?

A. Well, it sounded so.

Q. It was almost ahead?

A. Almost ahead, yes, sir; as near as I could tell.

Q. And that was the time when you gave the order to port?

A. Yes, sir.

Q. You know that if you hear a whistle forward of the beam which you can't locate that you really ought to stop your ship; isn't that so?

A. Yes, sir; that is so.

Q. That would save a good many collisions if that was obeyed, wouldn't it?

A. Yes; but it was reported on the port bow.

Q. But you have just told us that you didn't hear it reported on the port bow?

A. No, sir.

Q. You have to go by what you heard yourself?

A. Yes, sir.

129 Q. When you heard it, it was within half a point of dead ahead. How far were you standing on the forecastle head from the line of the keel? That is, how far over towards the port bow—when you heard the whistle?

A. I should judge I stood about half way between the lines of the vessel.

Q. How broad is the forecastle head at the point where you were standing?

A. About 28 feet.

Q. Then you think that you would be standing about seven feet to the port side of the line of the keel?

A. About, probably.

Q. Did you continue to stand there, or did you walk about?

A. I might have moved about; I couldn't tell whether I moved out of my steps; I suppose I probably did; I couldn't say whether I moved out of my steps or anything like that.

Q. Did the lookout say anything when this whistle sounded after you got forward, or did he leave that to you to report?

A. He left that to me; he didn't say anything, to the best of my knowledge.

Q. You didn't notice any report?
A. No, sir.
Q. He wouldn't naturally report if you were there yourself?
A. No, sir.
Q. The whistle was loud enough? There was no mistaking it?
A. Yes, sir.
Q. When you went forward from the pilot house to the forecastle head do you have to go down some steps into a kind of a well deck to cross over?
A. We have to go down on the main deck.
Q. And then go up again some steps?
A. Yes, sir.
Q. Which side did you go down from the after deck to the well deck or main deck?
A. From the pilot house there is only one side to go down the steps.
130 Q. That is in the middle, isn't it?
A. No, sir; that is on the starboard side.
Q. When you went up the other steps to the forecastle head which steps did you go up then?
A. We have a pair of steps on each side; I don't remember which side I did go up; but to the best of my knowledge I went up on the port side and crossed over.
Q. Then you must have gone sort of diagonally across the ship? You went down on the starboard side and came up on the port side?
A. Yes, sir.
Q. Did you walk or did you run?
A. I walked.
Q. The usual way?
A. Yes.
Q. When you went up these steps how far forward of the steps did you go to the place where you stood when you heard the whistle? Is it right at the head of the steps or some distance forward?
A. It is twenty feet; the forecastle head is twenty feet from there.
Q. You didn't go clear to the stem?
A. I didn't go clear to the stem, no, sir.
Q. I want to get at how much of that twenty feet you did go?
A. I suppose I stopped near amidships.
Q. About half way?
A. Yes, sir; about half.
Q. You didn't have but one lookout regularly stationed on the forecastle head during this fog?
A. No.
Q. Was there anybody else around the deck?
A. Probably there might have been some passengers about, but I didn't notice them.
Q. It was rather early for any passengers?
A. Yes, sir.
Q. There was no one of your crew out that you know of?
A. There probably might have been some firemen out, or something like that; but I don't remember anything about that at all.

Q. You said that after you told the chief officer to repeat
131 an order down to the engine room that you noticed the vessel was going slower; where was it that you looked over the side to judge that—from the window of the pilothouse?

A. No, sir; that was after I went up forward just before the collision.

Q. Then that was some time between 4.41 and 4.45?

A. Yes, sir; I could tell by the motion; I had never judged by the water; I had never looked over at the water; but I judged by the motion when I was in the pilothouse.

Q. When you say the motion what do you mean? The beat of the engines?

A. I mean the motion of the ship; the vibration of the ship.

Q. That is, the beat of her engines as she revolves?

A. Yes, sir.

Q. But you hadn't looked to see the water alongside until you got up on the forecastle head?

A. I hadn't noticed the water particularly until I got up there; I know before that the ship was going before that on a half speed; I judged about half speed.

Q. You hadn't given any bell to the engine to go half speed, had you?

A. No, sir.

Q. She was still running under her full bell?

A. Yes, sir.

Q. Do you know what your full steam pressure is that the *Saginaw* carries when she is making her regular speed?

A. I believe she carries about 80 pounds.

Q. You say if she stops she is likely to blow off?

A. Yes.

Q. That is, if she remains stopped some time?

A. Yes, sir.

Q. Had you made any cast of the lead coming up during the time between two o'clock and four?

A. Yes, sir.

Q. Did you slow the ship for that?

A. No, sir.

Q. Kept her at full speed?

A. Yes, sir.

132 Q. Do you know what officer attended to that?

A. Yes, sir.

Q. Who was that?

A. The first mate.

Q. Did he go out of the pilothouse to do that?

A. He went out of the pilothouse to do that; I took his place.

Q. How long did it take him to make those casts?

A. He can do it in five minutes very easily, sometimes less time.

Q. Doesn't he have to have a man to let go of the lead for him?

A. We have the lead all ready forward.

Q. Doesn't somebody have to drop it?

A. Yes, the man on the forecastle head throws it off.

Q. Isn't it your habit in fog to sound that way very often?

A. Some places it is, yes; where we know that we have got but a short distance to run or anything like that, but where we know that we have five or six hours we wouldn't cast the lead more than once every hour.

Q. When this was being done the lookout had to let go of the lead and the officer had to stand somewhere to look at the line and see the draft. Did he stand on the bridge?

A. No, sir.

Q. Or did he stand on the deck below?

A. He was down on the main deck; he didn't stay on the bridge, he was down on the main deck.

Q. Do you remember whether you did that about four o'clock?

A. In a short time, somewheres about four o'clock.

Q. What cast did he make, how many fathoms?

A. He didn't tell me when he came up and I didn't ask him.

Q. Did they make some other casts between four o'clock and the collision?

A. No, sir.

Q. At that time he left the pilothouse you took his place?

A. Yes, sir.

Q. Of course you continued to blow the whistle?

A. Yes, sir; I blew the whistle myself.

133 Q. Is not it customary for the officer who makes the cast to report to the captain what depth of water he makes?

A. Yes, sir; it is the customary rule, but it seems that he didn't at that time; this was once out of a thousand. He didn't happen to do it that time; once out of a thousand times, I guess, that he didn't tell me or I didn't ask him.

Q. Doesn't he sometimes call out right at the time he makes the cast?

A. He does if it is anywheres where we are running in any close quarters; if we are running anywhere where we want to know what water we want to carry.

Q. Did he report to you what the soundings were at three o'clock?

A. No, sir; he hadn't throwed the lead but once from two o'clock; from the time I came on deck the only time the mate throwed the lead was at that time.

Q. That was about when?

A. Somewheres about four o'clock.

Q. Was the vessel still going at full speed when he did that?

A. Yes, sir.

Q. And you have no idea what draft of water was made?

A. I am pretty certain it wasn't less than twelve fathoms of water.

Q. Of course if it had been less than twelve fathoms——?

A. He would have told me.

Q. You would undoubtedly have done something to change the course?

A. No, sir.

Q. Would you have kept on at twelve?

A. That is about what we generally do—twelve or twelve and a half.

Q. If it had been less than twelve it would have been a warning to you?

A. We very often get less than twelve and we are all right, we go on—sometimes we get ten or eight.

Q. Isn't it your custom to cast a lead just as you get up to
134 Winter Quarter?

A. Yes, if we don't see the light.

Q. So you would soon have been preparing for another cast if the collision hadn't happened?

A. Oh, yes, sir; we would have stopped her if we hadn't heard the whistle.

Q. How do you think you headed at the first contact of the two ships?

A. When I first heard the whistle?

Q. No, when the two ships first struck each other, when your stern and the *Hamilton's* bow came together, you said at an angle of about three points, how do you think you headed?

A. That I couldn't tell you.

Q. What do you estimate it to have been?

A. I should think she ought to have been heading N. E. by E. half—all of that, if not more—more to the eastward of that, nothing under that; might have been heading E., N. E., I couldn't say.

Q. When you walked across from the pilot-house down on deck and up on the steps to the forecastle head, you didn't look over the ship's side then to see how fast you were going through the water because you were crossing diagonally from one place to the other?

A. No, sir.

Q. When you were up on the forecastle head you were listening very intently for this whistle?

A. Yes, sir.

Q. And when you heard it were you clear in your mind whether it was a steamer or whether it was the lightship?

A. I was perfectly—I know the whistle too well to think it was the lightship.

Q. You said that the whistle of the lightship would be given at intervals of about a minute or 59 seconds?

A. Yes, sir.

Q. And this was about a minute after it had been blown before?

A. Well, there is a different sound to the whistle.

135 Q. You felt quite clear then that it was a steamer?

A. Yes.

Q. You didn't think it was the lightship?

A. No, sir.

Q. Suppose it had been the lightship which you made dead ahead, wouldn't you have ported your wheel to have cleared it?

A. If it had been dead ahead and had sounded close to us, we might have ported to clear it or we might have starboarded to clear it; we could leave it on either side.

Q. The way that whistle sounded was it close to you?
A. It didn't sound very plain.
Q. It was really nearer to you than you though it was?
A. Yes, sir; the whistles didn't sound very plain at all; if it had we could certainly have heard Winter Quarter whistle only two miles off—we certainly could have heard her whistle.
Q. How do you know that the Winter Quarter was only two miles off?
A. It was a little over two miles when the collision occurred.
Q. That is it is about two miles from where the wreck is now?
A. Two and three-quarters, yes, sir.
Q. Under ordinary conditions don't you hear the whistle of the lightship as far as two miles?
A. Yes, sir.
Q. You ought to hear it much further?
A. Yes, sir.
Q. How was the wind at that time?
A. The wind was about NE.
Q. That wouldn't affect your hearing the whistles at all, would *you?*
A. No, sir.
Q. It ought to help you?
A. If anything.
Q. As far as you know then there were no bells given to the engine room to stop from the time you left the pilot house until the collision?
A. No, sir.

Q. You have already said that there was no bell given be-
136 fore that?

A. No, sir; nothing but my orders to give the engineers, to slow down and to run the steam down.
Q. And that was spoken through the speaking tube?
A. Yes.
Q. By Mr. Goslee?
A. Yes, sir.
Q. You don't have a regular telegraph to the engine room?
A. No, sir.
Q. You have a system of bells and a tube?
A. Yes, sir.
Q. You are quite clear that you were in good health that night before the collision and not ailing at all?
A. If I had been ailing I wouldn't have stopped up, the second mate would have come up.
Q. Sometimes in time of fog you stay up when you don't feel well, don't you?
A. In a fog, yes, very often. When it is a fog; but that night when we left it was perfectly clear; you could see as far as you would like to see.
Q. What do you mean when you left, do you mean the Cape?
A. When I went off the watch.

Q. When you went off the watch that is some time after midnight?

A. Yes.

Q. What kind of lights does the *Saginaw* carry?

A. She carries one masthead light; side lights.

Q. She doesn't have any range lights?

A. No, sir.

Q. At the time of the collision, when you first saw the *Hamilton* what lights on her did you see?

A. I saw her masthead light—was the first light I saw; I didn't see no side lights.

Q. You don't remember seeing any at all?

A. No, sir.

Q. Of course as she came abreast of you you must have seen both her lights, mustn't you?

A. I saw both of her lights when she got near.

Q. But the first time you only remember the masthead light?

A. That is all.

137 Redirect by Mr. WARD:

Q. From the time that the fog set in thick down to the collision how often was the fog signal of the *Saginaw* blown?

A. It would average nearly every minute.

Q. Regularly blown?

A. Yes, sir; regularly blown.

Q. I mean when the fog was thick you didn't intermit the blowing as you told us you did when it was changing and rifting before four A. M.?

A. I might probably a little bit maybe; but one every minute as near as we could blow it all the time—all the time.

Q. If you had used a bell to the engine room to slow down, what bell would you have rung?

A. I should have rung one bell.

Q. Is there any bell which would enable you to tell the engineer to run the steam down?

A. No, sir.

Q. Was that the reason that you sent a message instead of ringing a bell, so that he might know both those things?

A. Yes, sir.

Q. When you heard the whistle after you had gone forward, how soon do you think you saw the loom of the *Hamilton?*

A. After I heard her first whistle?

Q. Yes.

A. Not more than a minute or so.

Q. How soon after you saw the *Hamilton* do you think she struck you?

A. Probably it might have been half a minute, not much more.

Q. When you heard the whistle of the *Hamilton* did you think you had located it?

A. Well we located it, yes, sir; when I heard it I thought I located it.

Q. What was your judgment as to the right course to pursue in meeting a vessel whose whistle you located a half a point on your port bow in a dense fog?

138 Mr. Putnam objects to the question.

A. The best judgment would be to stop, that would be the best judgment. But as it was, as it was reported on the port bow and I ported the wheel, I thought we was perfectly safe to go on as we were.

Q. How long is the pilot house fore and aft; about what is the distance fore and aft where you were standing?

A. About six feet, probably a little over that.

By Mr. PUTNAM:

Q. What is your age?

A. 62 last October.

Q. How long have you held a master's license?

A. Ever since the Civil War and I had charge of a boat before that.

Q. How many years, forty years is it?

A. Very near forty years since I had my first license.

By Mr. WARD:

Q. How many collisions have you been in since you have been a master?

A. This is the first collision that I ever had at sea.

Q. By that do you mean that you have had some collision that wasn't at sea?

A. Yes, sir; I have had one collision in the Delaware Bay; that was the worst collision that I ever had except this last one; I never had a collision before to amount to anything at all.

Q. Didn't you testify before the inspectors at page 4 as follows: "Q. After the engines were slowed what do you consider the speed "of the vessel was? A. Between five and six miles an hour, mod- "erate speed."

A. Yes, sir.

Q. Did you ever accurately ascertain by experiment that the *Saginaw* when going full speed ahead would forge ahead

139 twelve lengths if her engines were reversed full speed ahead?

A. If she was rung up, deep loaded.

Q. Did you ever do it?

A. No, sir; I never done it, but I know that I have stopped her and she has gone off—never would stop it appeared to me; I don't know how far she would go.

Cross-examination by Mr. MYNDERSE:

Q. You say the vessels came together at an angle of about three points?

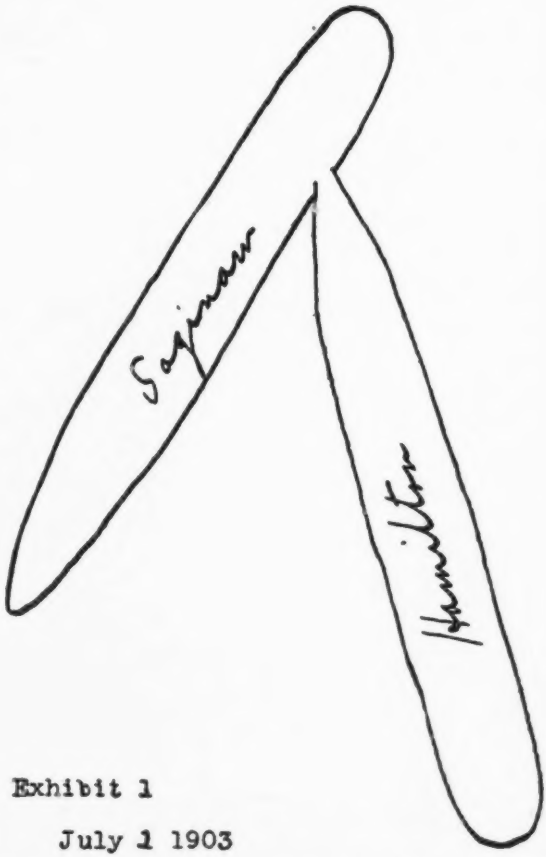
A. Something similar to it.

Q. What do you mean by that?

A. Probably a little more than that.

The witness makes the Diagram hereto annexed marked Cargo Exhibit 1 of this date.

140



Q. Do you recall seeing the side lights of the *Hamilton,* the red and green lights, at all?

A. No, sir.

Q. Which way did the *Hamilton* pass away from you after the collision?

A. She passed right underneath our stern.

Q. And off then on which side of you?

A. Right off on the starboard side.

141 By Mr. PUTNAM:

Q. When you first saw the *Hamilton* was it the masthead light that you saw or the loom of the vessel?

A. I saw the loom of the vessel first; almost as soon as I saw the loom of her I saw her masthead light but I saw the loom of the vessel first.

Q. Have you any recollection of seeing any other lights beside the masthead light?

A. No, sir.

WILLIAM S. MORRIS, being duly sworn and examined as a witness for the Clyde Steamship Company, testifies:

By Mr. WARD:

Q. You follow the water?
A. Yes, sir.
Q. For how many years?
A. 34 years.
Q. How long have you been in steam?
A. Been in steam about 10 years.
Q. On the 5th of May, 1903, what was your pos-t-on?
A. Second officer of the steamship *Saginaw*.
Q. What papers had you?
A. My license was for master of ocean steamboats and also master of sail ships; pilot's license for Delaware Bay and harbor New York Bay and harbor.
Q. Where did you go on duty on the 4th of May?
A. I went on duty about seven o'clock that night, or 6.30.
Q. What time did you leave the wharf?
A. We left the wharf about 6:30, about the time I went on duty.
Q. When did you go off?
A. At 12:30, sir.
142 Q. What was the character of the weather when you went below?
A. Clear and fine; light easterly wind.
Q. Did you turn in?
A. Yes, sir; I turned in about one o'clock.
Q. Did you come on deck again after that?
A. No, sir; not till about 4.40.
Q. What brought you up on deck then?
A. The continued blowing of the whistle; I couldn't sleep very well from two o'clock and when daylight commenced to break I thought I would go on deck and have a look around.
Q. So you didn't come on deck in the performance of any duty?
A. No, sir.
Q. What was the first you heard of the *Hamilton?*
O. I went up on the bridge and I heard an approaching whistle about ahead of us.
Q. A fog signal?
A. Yes, sir; a fog signal.
Q. What was the character of the weather then?
A. Thick dense fog.
Q. What did you do then?
A. I left the bridge and came down and I heard another whistle.

Q. How long after was that?
A. About one minute or so.
Q. Where did that *that* second whistle appear to come from?
A. About broad abeam on the other side; I came down the starboard side and I heard the whistle on the port side.
Q. You say you were abeam or the whistle was?
A. The sound of the whistle was abeam of us on the port.
Q. On the port side?
A. On the port side about abeam.
Q. At that time where were you?
A. I was about 30 feet from the bridge on the main deck looking aft.

Q. What was the next thing that happened that was
143 unusual?

A. Immediately after the whistle blew I saw the *Hamilton* strike us on the port side and pass right along.
Q. About where did she strike you on the port side?
A. I should judge about 25 feet forward from the after rail.
Q. Have you got after bitts on the steamer on each side?
A. On each side, yes sir.
Q. Do you know where with reference to the after bitts on the port side she struck you?
A. On the port side they are situated about ten feet forward of the corner of the saloon, forward of the house; about ten feet forward of the after part of the house.
Q. Do you know whether she carried away those bit-s or not?
A. I don't know, sir, but I think she struck in the neighborhood of the bit-s there.
Q. How about the injury on the starboard side; how far forward was that?
A. She cut in the starboard side about 12 or 15 feet on the starboard side.
Q. Did she cut aft of the after bit-s there?
A. Yes, sir.
Q. When she struck you how did she angle; aft on your ship or forward or how?
A. She struck an angling position say about a point and a half forward of abeam, angling way.
Q. Angling aft?
A. Yes, sir, as indicated by this diagram. She went in at the point *a* and came out at the point *b*.

The diagram made by the witness is marked Morris Diagram and hereto annexed.

Q. What effect had it upon the *Saginaw?*
A. It knocked her over about two feet of a list, gave her about two feet of a list.

144 Q. Which way?

A. To starboard; and somehow or other she kept that list right along afterward.
Q. Did you see anything come out of her?

A. Yes, sir.
Q. What?
A. I saw the cargo come out of her.
Q. Did you get any impression as to the speed of the *Hamilton?*
A. Yes, sir; my impression was she was going about ten knots, nothing less.
Q. What was the last that you saw of the *Hamilton?*
A. The stern was the last I saw.
Q. On which side of the *Saginaw* was that?
A. On the starboard side.
Q. Did you keep sight of her or lose her in the fog?
A. I lost her about two minutes afterwards in the fog.
Q. After you had noticed what the character of the injury was what did you do?
A. When I noticed the crash I ran right aft.
Q. After you had been aft and saw the cargo coming out, etc., as you have told us, what was the next thing you did?
A. I met Mr. Goslee, the first mate, on deck; he was coming aft and he met me and asked me if I had made an investigation of the damage. I told him the whole stern was cut off and the cargo was floating out.
Q. What did you do then?
A. Then he told me to get the boats all ready. I believe the captain gave him that order to get the boats all ready. Then I ran to the saloon and called the passengers.
Q. Did you do anything with the boats?
A. Yes, sir.
Q. What boat?
A. Our starboard boats.
Q. What did you do with them?
A. Myself with the assistance of two of the crew and two firemen got her out into the water.
145 Q. Then what happened?
A. We got the women into the boat as soon as possible. The captain was there superintending the placing of the women in the boat. We got all the women and two men passengers in the boat and two sailors and we tried to shove off, but we couldn't shove off; the careening of the vessel and the suction drew us into the saloon, the sinking part of the vessel, and our boat was capsized and were all put into the water.
Q. Was there any line from the boat to the steamer at that time or was she free?
A. She was all free, sir.
Q. Was there anything the matter with the boat other than you have told?
A. No, sir; everything was in order.
Q. Then it careened?
A. Careened with the vessel.
Q. What happened to you?
A. I went into the water also along with the rest. Then I swam until I got into the boat; I don't know how I got into the boat; it

was off ten feet away from me when I got on top of the water; and when I got on the boat, there was another passenger hanging on the stern too.

Q. Was the boat upright?

A. She was upright and full of water; I told him to get into the boat and I got into the boat.

Q. How were you saved?

A. When the vessel went down, we were drawn across the vessel backwards and forewards several times, and then I suppose we drifted about 200 feet from the vessel altogether and were picked up by the *Hamilton's* boat.

Q. You heard, as I understand it, a whistle that you thought was ahead or on the port bow and then in about a minute do you say you heard another whistle?

A. Abeam.

146 Q. How soon after the second whistle did you see the *Hamilton* herself?

A. Right immediately after, about a minute.

Q. Did you make any estimate of how far the *Hamilton* was off when you saw her, when she came in sight?

A. No, sir, I just saw her all at once. She hit us and passed right along. I saw her bow pass right through us first and then the whole body of the ship went right past us.

Q. Did you make any observation as to the speed of the *Saginaw?*

A. Yes, sir; before the collision when I first went on the bridge I looked over the side and I judged she was going about five knots.

Q. That was from the appearance of the water?

A. Yes, sir.

Cross-examination by Mr. MYNDERSE:

Q. You spoke of the *Hamilton* going in at one point of the *Saginaw* and coming out at the other. Do you mean that she cut right through from one side to the other?

A. Yes, sir, an angle way; she went right clean through from one side to the other.

Q. And cut the stern right off?

A. And cut the stern completely off; left no rags at all.

Cross-examination by Mr. PUTNAM:

Q. Whereabouts were you standing when the first contact occurred?

A. I was standing abreast of the galley, about 30 feet from the after bridge on the main deck.

Q. Is that forward or aft of the bridge?

A. Aft of the bridge, sir.

Q. That is what you call the after well or is it up on a higher deck?

A. The after bridge is pretty near amidships.

147 Q. Which side were you on?

A. I was on the starboard side, sir.

Q. Near the rail?
A. Near the rail, yes, sir; I was between the rail and the house, standing right in the middle.
Q. How much of an alley-way is there between the rail and the house?
A. Where I stood there was about 12 feet, but aft there was only about three feet.
Q. You couldn't see then anything on the port side because the house was between you?
A. No, I couldn't see anything on the port side.
Q. Didn't see anything of the *Hamilton* as she came up?
A. Not until I felt the shock and it was over and she passed right across and I see her bow go past our stern.
Q. When you say you heard a whistle abeam, how long was that before the collision?
A. It was immediately afterward the collision was; it was about a minute I should judge.
Q. How many whistles did you hear, all told?
A. Two, sir.
Q. Did you see the captain at all?
A. My captain, yes sir.
Q. Where was he?
A. He was on the forecastle when I went on the bridge first.
Q. When you first came out of your room and went on the bridge, was he already on the forecastle?
A. Yes, sir.
Q. You didn't see the *Hamilton* strike your ship at all then?
A. No, sir, I didn't see her; I just felt the shock and see the vessel pass.
Q. When you estimate the angle of the collision, you do that by what you saw of the injury when you went aft?
A. Yes.
Q. You didn't stay aft very long?
A. No, sir.
Q. She commenced settling when you were aft?
A. Yes sir.
148 Q. You went right forward?
A. Yes, sir.
Q. So you only made a momentary observation of it?
A. Yes.
Q. Did you see any part of the *Saginaw* cut off and away from her as if it had been cut off and was floating separately?
A. No, sir; everything was stripped off.
Q. Didn't see what became of it?
A. No, sir; everything be-aft the house was cut off clean.
Q. How far aft did you go to the corner of the house?
A. To the corner of the house, as far as I could go to the break.
Q. As far as the house?
A. As far as the house; as far as I could go.
Q. How much further was the deck remaining abaft the house?
A. I went to the very edge of the broken deck.

Q. Was it ten feet or twenty feet from the house? The edge that was broken off was how many feet from the house?

A. Right square by the house on that side.

Q. By square was it both sides alike?

A. No, sir, the other side was cut away further, where she struck us further forward.

Q. That is the port side was further forward than the starboard side?

A. Yes, sir.

Q. Then the next thing was to lower a boat?

A. Yes, sir.

Q. Did you take charge of that yourself?

A. Yes, sir.

Q. Which boat was it?

A. The starboard boat, sir.

Q. You had more than one boat on the starboard side?

A. There was one boat on the starboard side and two on the port.

Q. Was this forward of the bridge or aft of the bridge?

A. Be-aft the bridge, sir.

Q. Then it was pretty near where you had been standing?

A. Yes, sir.

149 Q. It didn't take you very long to get that clear, did it?

A. No, sir.

Q. When you got it down on a level and swung out you could step right into it?

A. Yes, sir, I put the wheel-strap right over the rail of the boat.

Q. Then after the people had all got in you lowered the boat by the fall?

A. No, sir; we had the boat lowered in the water before the women got into it.

Q. How much freeboard did your vessel have?

A. Our steamer was sunk to almost three feet of the water when the women got in the boat; they stepped right over the rail of the boat.

Q. When they got in was it still fast to the fall?

A. No sir, it was all ready to take the passengers in and shove it off.

Q. Who was holding the boat?

A. The mate was holding it with the painter.

Q. He still had hold of it?

A. Yes, sir.

Q. When you got in did anybody take the oars?

A. Yes, sir; there were two men and myself and one passenger.

Q. And then she swung?

A. She drifted off a little ways then.

Q. When she drifted off she was quite clear from the steamer?

A. Quite clear, yes, sir.

Q. Room enough to get out an oar?

A. No, sir, we couldn't get an oar off; we put our oars in between the steamer, she drew right in; we hadn't room to work our oars.

Q. Which part of the rowboat sank first?

A. We rolled right over sideways.
Q. You didn't roll over on an even keel, did you?
A. Yes.
Q. Didn't the bow go down or the stern go down?
A. No, sir; our boat went right over.
Q. Which side?
A. The port side of the boat went into the water first.
150 Q. That is the side next to the steamer?
A. Yes, sir.
Q. I don't quite understand why if the boat wasn't fast to the steamer and it drifted away from her, what made her roll over.
A. We didn't drift away from the steamer; we tried to drift away. We tried to shove that boat off but we couldn't get her off and she drew right on the sinking part of the steamer and the rail going down, I suppose it tripped the underneath keel of the boat and she turned right over.
Q. Was it a large whale-boat?
A. Yes, sir.
Q. How many people would it carry?
A. I suppose we had about 15.
Q. Is not it the fact that there was way on the steamer and that caused the boat to roll over?
A. No, sir; there was no way on the steamer then.
Q. You think the way had all been killed?
A. Yes, sir.
Q. It seems a little strange to think that with experienced seamen in a boat clear from the steamer's side, you would allow it to roll over if there was no way on the steamer.
A. We had our oars out and tried to shove the boat off. As soon as we took our oars in she sucked right in towards the steamer again; we couldn't use our oars at all.
Q. Did it suck in toward the after part of the steamer or towards the fore part of the steamer?
A. The after part.
Q. That showed the steamer was moving ahead?
A. No, sir; the suction of the vessel was drawing ahead—drawing the boat that way. I believe our vessel's stern was on the ground then.
Q. When you came up your boat was right side up but full of water, is that right?
A. Yes, sir.
Q. Do you know how it got righted?
A. Those lifeboats right themselves. They have air tanks
151 in each end and you fill them full of water and they always right up again on the keel.
Q. You got into it again?
A. Yes, sir.
Q. And stayed in it until you were picked up?
A. Yes, sir.
Q. When you came up after your being overboard, where was the boat then?

898

A. The boat was ten feet from me.

Q. With reference to the steamer?

A. The steamer was about in the same place; the steamer must be in the same place because I believe the steamboat's stern was on the bottom then.

Q. Was the boat right alongside of the steamer?

A. The boat, as I say, was drawn over the sinking part of the steamer—the saloon.

Q. Where was the boat with reference to the sunken part of the steamer when you came up; alongside or abaft of it or where was it?

A. A little off the side and a little aft; I suppose about ten feet out of her position when she capsized; she was drawn over with the suction of the vessel.

Q. Did anybody call you out of your room when you came out?

A. No, sir.

Q. Did you hear the whistles for any length of time before you came out?

A. No, sir, until I came up on the bridge.

Q. I mean the whistles of your own steamer?

A. Yes, sir.

Q. How long were they blowing?

A. They were blowing from a little after one o'clock.

Q. You hadn't been awake all that time?

A. I had been awake since about one o'clock.

Q. Where you were did you hear them taking any soundings during the night?

A. I believe I heard somebody throw the lead, who it was I don't know. I didn't turn out; I heard them sounding though.

152 Q. When was that?

A. Between three and four.

Q. Did you hear anything after that?

A. No, sir.

Q. Whereabouts in the house is your room located?

A. Right almost under the bridge.

Q. Which side?

A. In the starboard side.

Q. Is it near the chart room?

A. We didn't have no chart room. The mate was forward of me under the bridge and I was right next to him; I suppose I was about four feet be-aft the bridge.

Q. Are you on the same level with the pilot-house?

A. No, sir.

Q. Above it?

A. No, sir; below it.

Q. You have to go up steps to go up to the pilot house?

A. Yes, sir.

Q. How many steps?

A. Eight, I believe, or nine; I am not certain which.

Q. When you came out of your room you came out on the starboard side?

A. Yes, sir.

Q. At that time you could see the captain on the forecastle head?
A. Yes, sir.
Q. And you heard two whistles after that?
A. Yes, sir.
Q. Did you hear any sound of the steering gear working before you came out of your room?
A. Yes, sir.
Q. You can tell when the wheel is put hard over; it makes a noise?
A. Yes, sir.
Q. Did you hear that before you came out?
A. Yes, sir.
Q. How long before you came out did you hear that?
A. I guess somewheres about in the neighborhood of four o'clock.
Q. Did you hear it being put over hard any particular direction just before you came out of your room?
A. No, sir; I couldn't tell. I heard the wheel move several times, but I couldn't tell in what direction; I heard the motion of the wheel.
153 Q. You heard nothing special before you came out of your room?
A. No, sir.
Q. After you came out did you hear the wheel put over.
A. I didn't hear the wheel go over, but I heard the order given to put it over.
Q. What order did you hear given?
A. The mate told the man at the wheel to port—hard aport.
Q. Did you hear anything from the captain?
A. I believe the captain passed the word to the mate.
Q. Then the only order that you heard was hard aport?
A. Hard aport.
Q. Was that before you heard the whistle or after?
A. That was after we heard one whistle, after we heard the first whistle.
Q. Where were you standing then?
A. I was just on top of the bridge.
Q. That was before you came down to the place that you were in?
A. Yes, sir.
Q. You couldn't see any steamer then?
A. No, sir.
Q. When you were on duty the night before, do you remember passing Cape Charles Lightship?
A. Yes, sir.
Q. How near did you pass her?
A. I should think we were about fifty yards from her.
Q. About what time was that?
A. 10:42.
Q. How do you remember the time?
A. Because I put it in the logbook; I noted that myself; I was on deck, it was my watch.

Q. You put that time down in the log?
A. Yes.
Q. Did you afterwards tell the captain that?
A. Yes, sir; in the log; I put the course and distance run and the time we passed the lightship—we do that every lightship.
Q. Did you pass any other lightship after that during your watch?
A. No, sir.
154 Q. At that time you were going full speed?
A. Yes, sir.
Q. When you saw the *Hamilton* disappear after the collision how far away was she in the fog that you could see her?
A. I saw her I suppose about 200 or 300 feet off.
Q. Was that about as far as you could see a vessel in that fog?
A. Yes, sir; about two or three hundred feet.
Q. It was very dense, was it?
A. Yes, sir.
Q. From the place where you were standing, how far would you say it was to the stern—that is not what was cut off but to the actual stern?
A. I suppose about 150 feet.

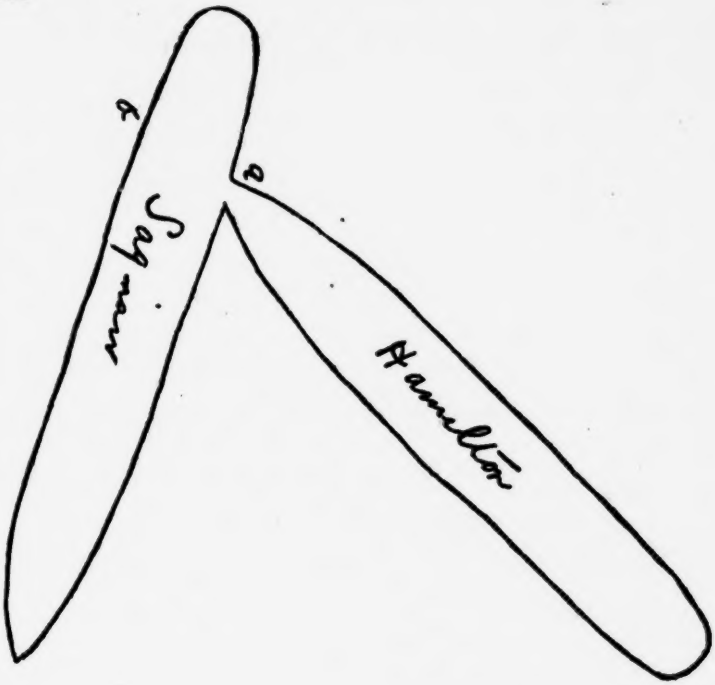
Redirect examination by Mr. WARD:

Q. What do you call the deck of the *Saginaw* on which the houses stand?
A. Some call it the quarter deck and some call it the main deck; the poop deck.
Q. What sort of a deck is it; is it broken or flush?
A. It is a flush deck, fore and aft.
Q. But the forecastle head is raised a little, *little,* isn't it?
A. No, sir; it is all on the one level; the forecastle deck and main deck is all one, flush fore and aft.
Q. Isn't it right at the forecastle a little above the main deck?
A. No, sir; it is only the sheer of the vessel, but the deck is right level forward.
Q. There is no well aft?
A. No, sir.

By Mr. MYNDERSE:

Q. Then you didn't see the *Hamilton* at all before the collision, as I understand?
A. I didn't, no, sir.

155



Morris Draqiam
July 1/03

156 JOSEPH N. J. SELTZER, being duly sworn and examined as a witness for the Clyde Steamship Company, testifies:

By Mr. WARD:

—. What is your business?
A. Marine engineer at the present time.
Q. How long have you been a marine engineer?
A. Twelve to fourteen years as near as I can recollect.
Q. What was your position on the 4th of May, 1903?
A. Chief engineer of the steamship *Saginaw*, Clyde Steamship Co.
Q. How long had you been her chief engineer?

A. Two years and six months; the 13th day of January, two years ago.

Q. What is the character of license which you have?

A. Chief engineer of ocean steamships.

Q. When did you go off duty on the first day out from Norfolk?

A. Somewheres after twelve o'clock in the morning of May 5th.

Q. You had been on duty from the time she left the pier?

A. From eight o'clock in the evening until a little after twelve.

Q. From the time she left her pier down to the time that you went off, how had her engines been working?

A. First class.

Q. In respect to speed?

A. The ordinary running speed on that route?

Q. Full speed?

A. Full speed; that is correct; doing all they could.

Q. What was the character of the weather when you turned in?

A. The stars were all out; clear weather.

Q. What is the character of the engines of the *Saginaw?*

A. Compound engines.

Q. In respect to their conditon at the time of the accident,
157 what was it?

A. Everything first class. You mean running order?

Q. When did you turn out again*st* after you turned in?

A. When the crash woke me of the *Hamilton* going into us.

Q. You were asleep, were you not?

A. I was asleep.

Q. Whereabouts is your room?

A. On the port side, right alongside of the mate's room; just a little bit forward of the bridge of the *Saginaw.*

Q. The bridge is over it?

A. The bridge is a little bit aft over it?

Q. I mean higher?

A. Yes, sir.

Q. You felt this shock?

A. I did, sir; it woke me up.

Q. Did you come right out?

A. Yes, sir; right in my underclothes.

Q. You didn't wait to dress; you came right out?

A. Yes.

Q. When you came out what did you see?

A. I saw the *Hamilton* going through us.

Q. How did she seem to be going through you?

A. She was going from port to starboard; struck us on the port side.

Q. Have you any idea where she struck you; on the port side or how?

A. She struck us I suppose anywhere from fifteen to twenty or twenty-five feet from the extreme end of the ship.

Q. Did she carry away any part of the house there?

A. Yes, sir; she carried away the saloon deck and the sides of the house.

Q. Do you know whether she carried away as much on the starboard side?

A. No, sir; I wasn't on the starboard side of the ship until I took to the rigging.

Q. After you saw that what was the first thing you did?

A. Went in the engine-room.

Q. What did you find the engines doing when you got
158 there?

A. They had stopped the engines; compelled to.

Q. Did you see anybody there in charge?

A. The first-assistant engineer.

Q. What was his name?

A. William Masson.

Q. What became of him?

A. He was drowned.

Q. Did you have any conversation with him about the way the engines were working, etc.?

Objected to by Mr. Putnam.

A. Yes, sir. I asked him what he had done, why he had stopped her; and he told me that he thought that the shaft had either been broken off or had been cut completely off, and she had raced so awfully that he thought she was going to collapse. That is what scared me when I got in the engine-room. The engine had about stopped when I got down there, on her last revolution.

Q. Did you have any conversation with him as to the way he was working the engines?

A. Yes, sir.

Q. What did he say?

Objected to by Mr. Putnam.

A. I asked him if he received any orders at all from the pilot house; he told me yes; he told me that the orders had come down shortly after four o'clock to slow the engine, and to let his steam run down, as in all probability they would want to stop, and to let them know when steam was down so he could stop and he told me that when the crash came he was just on the point of calling up that they could stop any time they wanted to, when the *Hamilton* ran into us.

Q. Did he say what steam he was carrying?

A. At that particular time he was down to 50 pounds of steam.

159 Q. What was your full allowance?

A. Eighty pounds, the Inspectors' pressure.

Q. What was she carrying when you left?

A. Seventy-eight pounds of steam.

Q. Did you do anything in the engine-room?

A. We did all we could. Shut the compartment door leading

into the shaft alley from the engine room that is put there provided for just a case of that kind, and started her pumps. That is all we could do in the engine-room.

Q. What happened then?

A. Then we went on deck and went to our boats.

Q. Had any water come into the engine-room?

A. Yes; the water was running in, even after we got the compartment door down the water was running in fast.

Q. That was coming in from the stern?

A. Coming in from the stern.

Q. Then you went up to get into the boats?

A. To get into the boats.

Q. What boat did you go into?

A. I got the forward port boat with my crowd, got it overboard; after we got that swung clear of the chocks I took some of my men from that gang and started for the after port boat to help what sailors there was there with it, but we couldn't got to it; the water was up there too fast.

Q. She had gone down?

A. She had gone down too fast.

Q. Do you know how the first assistant engineer came to be drowned?

A. Yes, I saw him drown. I saw the man after we got this boat off the chocks and swung clear and people in it. He went around by my room to go to the rigging; and the only surviving woman passenger we met there on the deck; she had gotten out of the boat and was wet all over. He gave her his life preserver; took it off himself and I helped him tie it on her; and as we went around by the other side of the hatch we pulled the hatches off to save ourselves if possible after the ship went down; but the water was up to us then, and we both took to the rigging. After we got there the water caught him and turned him over and over, and I suppose hit him, struck him up against the deck somewheres, against the bridge; and that was the last of Masson; and I went up to the rigging.

Q. Did you see anybody else on the rigging?

A. Yes; I suppose nine or ten of us.

Q. The captain was there?

A. The captain was there, the mate, two oilers of mine, two firemen, a colored passenger, a man, and one white passenger.

Q. How did you eventually get saved—such as were saved?

A. I was up on the rigging on the backstays, and when the ship went from starboard to port and started to righten I was afraid she would jerk me off; and I caught a bale of cotton after I got in the water, and that helped me out all right.

Q. What was that motion of the ship?

A. She rolled over; we thought she was going to turn turtle.

Q. Which way did she roll first?

A. She rolled from starboard to port; her port side rolled right down like this first, and then it went over; when the water was coming up on her decks, when we left the boat, she gave a lurch to

starboard first, but when she began to fill up in the engine-room and come up in the fire-room, she began to go over to port; and all hands of us on the mast got up there; she went to port; and the last thing I saw Captain Tunnell his legs was under water, he was up to his middle in the water. Then with the mast down that far—I was beaft him on the backstay—then she rightened herself up, and she flung me off.

161 Q. And you got hold of a bale of cotton?

A. Yes, sir.

Q. The first mate was washed off the rigging?

A. The first mate was washed off the rigging alongside of me; he was washed off practically the same time that I was.

Q. And so with the first assistant engineer?

A. Yes, sir.

Q. Anybody else that you saw?

A. Knocked from the mast? No, sir; all the rest was from that starboard boat.

Cross-examination by Mr. PUTNAM:

Q. Who was in your watch in the engine-room before twelve o'clock?

A. I have an oiler and two firemen?

Q. You don't have any other engineer besides yourself?

A. No, sir; I stood a watch there.

Q. What was that oiler's name?

A. Tony Oragentula.

Q. Was he lost?

A. No, sir; he was saved.

Q. Who was in the next watch?

A. Morris Bristow; that is the assistant engineer; and William Hearn, an oiler, and two Spanish firemen.

Q. What became of that oiler?

A. He was on the mast with me.

Q. He was saved?

A. Yes, sir.

Q. Then the assistant engineer was the only one in the engine department that was lost; is that right?

A. That is all.

Q. When you went down in the engine-room the engines were already racing, weren't they?

A. They had been racing; she was just about at her last movement when I went down there myself.

Q. When you went on the grating and looked down were they racing then?

A. Just about stopped.

Q. How soon after the collision was it you looked in?

162 A. Just as soon as I could get down; just as soon as the wreck was over.

Q. So they didn't race very long?

A. They couldn't; she would have gone to pieces; it don't take but a very little while.

Q. When you went below did you look at the steam gauges or anything?

A. No; I didn't get into the engine-room floor then. I thought you meant when I was on watch. I couldn't get to the engine-room floor at all; when I went down to the engine-room, in that little time the water was to the engine-room platform; that is the last platform on the *Saginaw*.

Q. Then you didn't have very much time to do very much?

A. No, sir; we did it all in a very short time.

Q. Closing that door to the tunnel was done the first thing?

A. Yes, sir.

Q. That was done when you got there?

A. That was being done, and I helped do it. The pumps were being started by the oilers; we had everything very handy and put them on in less than a half a minute's time.

Q. I suppose you were not in the engine-room very long.

A. No, sir.

Q. Then when you came out you went to work at the boats?

A. At the port boats.

Q. These conversations that you had with the assistant engineer—were those in the engine-room or after you got on deck?

A. After we got on deck; except this one concerning the steam. While we were putting the compartment door down I asked these questions, started to, and finished it up while we were going up on deck.

Q. The talk that you had in the engine-room was about his letting the steam run down?

A. Yes, sir; when we were working on the door and working on our valve, etc.

163 Q. I suppose going into the engine-room you would naturally ask him how much steam there was on, wouldn't you?

A. Yes.

Q. That was the first question you asked him?

A. Yes, sir. That prompted the other question—what orders he had had from the deck. He told me that he only had 50 pounds.

Q. Did he tell you how much steam was on then?

A. He told me he had 50 pounds, and that prompted my question, why.

Q. Did he tell you he had 50 pounds after the engine had been racing that way?

A. Yes, sir.

Q. Wouldn't that run the steam down very much, for them to race around that way?

A. No; she had lost her wheel, lost all hold on the water; she would race with only 30 pounds of steam, she would throw herself to pieces?

Q. You didn't look at any gauge to see?

A. No, sir, I couldn't see at all; I couldn't get on the engine-room floor.

Q. But in your judgment had it been racing as much as half a minute?

A. I suppose all of that, from the time he was right there at the throttle.

Q. You could hear her on deck?

A. I could hear her when I got out of my room.

Q. It made a good deal of noise?

A. You know what a sound an engine will make going at that lightning speed; and he was right alongside of the throttle, and he stopped her just as soon as he stopped the turning, shut her down.

Q. What kind of a valve do you have?

A. The butterfly valve, and one that turns with the wheel; it is an English valve. Two, in fact. The butterfly we always use in a seaway in a storm for throttling the engine.

Q. Then you have really got two ways to throttle it?

A. We have two complete ways of stopping the ship; two valves; one we use in port, really a stop valve as well as a throttle.

164 Q. During the time you were in your room you had been sound asleep until the collision?

A. From about half past one; I read till half past one.

Q. Did you hear any fog signals?

A. Yes, sir; that is one of the things I did hear before I dozed off. I had been up two or three times with the fog whistle during the night—not to be out of the berth.

Q. Which side was your berth on?

A. On the port side; right aft of the middle hatch.

Q. When you are working in the engine-room, what part does the oiler take in assisting the engineer on watch?

A. He oils the engine and steering gear.

Q. Does he do anything to work them, if there is any call?

A. If they want to stop the engine, or anything like that?

Q. Anything of that kind. Does he do that?

A. Not unless we want him to.

Q. Suppose the engineer on duty for any reason is absent would the oiler undertake to obey the orders?

A. If he knew enough, yes, sir.

Q. That is the question. Does the oiler know enough to do it?

A. In my particular case, yes. The man that was there, I would cheerfully stake my reputation on him as an engineer, and if he had his American license I would try and get him one.

Q. How was it with the man that was there with the assistant?

A. That is the man I mean that was there, with the assistant.

Q. He was the man that was there at twelve o'clock?

A. That was the man.

Q. What was his name?

A. Joseph Oragentula; brother to the man on my watch.

Q. Both Spaniards?

A. Both Spaniards, and both bright men, too.

165 Before Hon. George B. Adams, Judge.

NEW YORK, *November 1st*, 1904.

Appearances.

Messrs. Convers & Kirlin, Attorneys for Claimants, by Mr. Kirlin;
Messrs. Wing, Putnam & Burlingham, Attorneys for Old Dominion Steamship Company, by Mr. Putnam;
Messrs. Robinson, Biddle & Ward, Attorneys for the Clyde Steamship Company, by Mr. Ward;
Messrs. Butler, Notman, Joline & Mynderse, Attorneys for Claimants of the cargo of the *Saginaw*, by Mr. Gould;
Messrs. Betts, Hunt, Hill & Betts, Attorneys for Claimants.

J. S. TUNNELL, recalled on behalf of the Claimants, testified as follows:

The COURT: This witness is the master of the *Saginaw*, I believe.
Mr. KIRLIN: Yes.

Examined by Mr. KIRLIN:

Q. Captain, you have previously been examined in this case, have you?
A. Yes, sir.
Q. Where were you at the time of the collision?
A. I was on the forward deck.
Q. How long had you been on watch yourself, prior to the collision?
A. I came on watch *on* half-past one.
Q. And the collision occurred about what time?
A. It has been so long now, I don't remember. It was in the neighborhood of five o'clock.
166 Q. About 4.45 or 5?
A. My testimony shows that; I haven't anything to say.
Q. You had been on watch from about half-past one until the *Hamilton's* whistle was heard?
A. I was in the pilothouse.
Q. Who was in charge of the navigation?
A. I was.
Q. When the whistle of the *Hamilton* was first heard, you were in the pilot-house, were you?
A. Yes, sir.
Q. What did you do then?
A. I went out for'ard, to locate the vessel.
Q. Did you leave any order to the mate as you went out to change the speed of the vessel in any way?
A. No, sir.
Q. When you got out and were on the deck, did you hear the whistle again?
A. Yes, sir.

Q. Did you give any order then or afterwards?
A. Yes sir, I give the order "Port the wheel."
Q. Afterwards did you give another order?
A. Yes.
Q. What was that?
A. The order was "Hard-a-port."
Q. Did you give any order about the speed?
A. No, sir, because——
Q. You had given the order originally to slow down, when the fog came on?
A. I had.
Q. You slowed her down to what you considered a proper rate of speed?
A. Yes, sir.

Petitioners' attorneys object to this question, and this line of testimony, as having been gone over already.

The COURT: I will consider it in connection with the other testimony. The witness himself says he does not recollect as distinctly as when he gave the former testimony.

167 Q. When you went out of the pilot-house, as you say, without giving any order to the mate to change the speed in any way, would it have been in accordance with usage for him to slow down or stop the vessel without further order from you?
A. No, sir.

Cross-examined by Mr. PUTNAM:

Q. Who had charge of the watch from 12 o'clock to four?
A. Mr. Goslee came on at half-past twelve; I had charge before that.
Q. And how long was his watch after half-past twelve?
A. His watch lasted until half-past six in the morning, or seven in clear weather.
Q. That was his regular watch?
A. In clear weather, yes, sir.
Q. And during that time, between half-past twelve and the collision, he was constantly in the pilot house?
A. Yes, sir, so was I.
Q. You came in and went out at times?
A. Yes, sir; I was near it all the time. I never was off the deck.
Q. Didn't you have a place where you turned in and slept between half-past twelve and half-past one?
A. No, sir.
Q. Is your recollection as clear as it was before?
A. I say I never turned in to sleep.
Q. Didn't you throw yourself on a lounge in the pilot house?
A. We did not have any lounge in the pilot house.
Q. You are positive of that?
A. I never was asleep.
Q. You are positive you were in the pilot-house from half-past twelve to 4.40?

A. Well, if I was not I was so close to it I might have been just outside.

Q. What were you doing?

168 A. Gentlemen, it has been so long ago I have forgotten; I don't remember. I have nothing more to say then what I have said.

By Mr. WARD:

Q. Did you give any orders at all between two o'clock and four?

A. Well, as I have said before, I gave this already. My testimony has been passed on long before, and it has been so long now I almost disremember anything at all about it.

Q. Do you recollect, Captain, that when you left the pilot house they had told you that the whistle had been heard?

A. Yes.

Q. Do you recollect whether they told you whereabouts it was heard from?

A. Well, I heard the whistle on the port bow.

Q. I will read your answer when you were examined before, and I will ask you whether it was correct: "Question. Was there anything said about whereabouts the whistle was that they heard? Answer. They said it was nearly ahead, or a little on the port bow, or half a point on the port bow." Is that right?

A. Yes, sir.

Q. Then you went forward?

A. Yes, sir.

By Mr. PUTNAM:

Q. Let me read what you testified to before: "Didn't you come out 1.45, hearing the whistle blowing? Answer. That was the time, 1.45, when I came out. Question. That time you had been asleep, hadn't you? Answer. I hadn't been below but a very few minutes, a very short time. Question. What time was it that you turned in? Answer. It was near one o'clock when I turned in. Question. And after you turned in you went to sleep, didn't you? Answer. I suppose I got to sleep; that is about all. Question. Did you take

169 off your clothing? A. Yes, sir, part of them. Question. And got into your berth? Answer. Yes."

A. Yes.

Q. When you were below sleeping in your berth, who was in charge of the watch?

A. Of course, we always leave the mate.

Q. That was Mr. Goslee?

A. When I am below.

Redirect by Mr. KIRLIN:

Q. You came back, you say, and were in charge two or three hours before the collision?

A. Yes, sir.

Q. When you went out of the pilot-house, how far did you go from the house itself?

A. I went on the bow of the ship.
Q. How far is that?
A. Well, the ship is in the neighborhood of three hundred feet long, and the bow is in the neighborhood of one hundred feet from the pilot-house.
Q. The pilot-house was open?
A. Yes.
Q. And you were within speaking distance of the wheel?
A. Yes, sir.
Q. You gave the orders from where you were?
A. Yes.
Q. Your room, as a matter of fact, was not down below?
A. No, sir; my room was right at the pilot-house. All I had to do was to go to the door.
Q. Your room adjoins the pilot-house?
A. Yes, sir; all on the same floor.

Recross by Mr. PUTNAM:

Q. When did you last see Mr. Goslee?
A. I don't remember when I last saw him.
Q. Did he go up the mast?
A. Gentlemen, it is such a long time I can't remember.
170 I was on the mast, but I couldn't see; I was in the water myself. There were several on the mast, but I couldn't see myself if he was there.

Opinion.

ADAMS, *J.*:

These petitions for limitation of liability on the part of the Old Dominion Steamship Company and the Clyde Steamship Company, were the result of a collision which occurred in the Atlantic Ocean near the Winter Quarter Shoal Lightship, off the coast of Virginia, about 7 miles at sea, on the 5th day of May, 1903, in the early morning, between the steamships *Hamilton* and *Saginaw,* owned by the respective petitioners. As usual in such cases, it was sought, in the beginning, to contest, as well as to limit, liability, and each vessel charged the other with faults alleged to have produced the collision. A dense fog prevailed at the time.

The *Hamilton,* about 300 feet long, and 40 feet beam, left New York on the 4th day of May, 1903, about 3 o'clock P. M., bound for Norfolk, Virginia. At the time of leaving the weather was fine, but about 8 o'clock a thick fog set in, and she reduced her speed slightly. At practically the same time she started her automatic electric whistle which was blown at intervals of about 54 seconds. When the Delaware Lightship was passed at about 11.35 P. M., the fog was dense and it continued so until after the collision.

The *Saginaw,* 238 feet long and 38 feet beam, left Norfolk, Virginia, the 4th day of May about 6.30 o'clock P. M., bound for Philadelphia. She ran into the fog about 1 A. M. of the 5th and
171 continued her full speed of about 9½ knots until a few minutes after 4 o'clock, when, according to her contention,

the fog first became dense. She then reduced her speed to some extent, not by orders by means of the Telegraph but by verbal directions through the speaking tube, running from the pilot house to the engine room, to slow the engine and let her steam run down. These orders were obeyed and she contends that they had the effect of reducing her headway at the point of collision to between 5 and 6 knots per hour.

The collision occurred at 4:44 or 4:45 o'clock A. M. about 2¾ miles S. S. E. of the Winter Quarter Lightship, the stem of the *Hamilton* striking the port side of the *Saginaw* about 30 feet from the stern and cutting off a portion of the stern, the direction of the blow extending aft. The course of the *Hamilton* prior to reaching the immediate vicinity of the collision was about Southwest ½ South, and that of the *Saginaw* Northeast by North. Both vessels had for some time been sounding fog whistles, and, prior to the collision, had heard the other's blasts. The *Saginaw* sank almost immediately and became a total loss, with some loss of life, personal injuries and damage to cargo. The *Hamilton's* stem was twisted slightly to port, but she was not materially injured and after picking up such of the survivors as could be found, after due search proceeded on her voyage.

The *Hamilton* was proceeding down the coast in a fog at about two-thirds of her full speed of 14 knots, and candidly admits that she was in fault for excessive speed.

The other faults charged against her of not sounding the signals required by law; not having any competent lookout; having a defective reversing gear; and in not stopping and backing seasonably before the collision are not, apparently, sustained by the evidence, but her excessive speed is enough to condemn her and *in* consideration of the other alleged faults is not required.

172

The charges of fault against the *Saginaw* are: in not sounding the signals required by law; at proceeding at an immoderate speed in fog; in not having any competent officers in charge, or any sufficient lookout; in not slowing, stopping and backing when the whistles of the *Hamilton* were heard; in not keeping her proper course; in porting her helm, in not taking any timely or seasonable precautions to prevent the collision.

The *Saginaw* strenuously contends that her own speed was not excessive, but if it was so, it was not contributory to the collision, which can be fully accounted for by the *Hamilton's* fault in that particular, citing *The Umbria,* 166 U. S. 404, where it was held in a collision case between that vessel and the *Iberia,* that the faults of the *Umbria* were so gross that the rule regarding any doubt as to the management of the other vessel, should be resolved in her favor.

The facts here appear to be that prior to the collision the *Saginaw* had been running for more than 30 miles in a dense fog under full speed bells and that, while so continuing, there was some reduction of speed, when near the point of collision, by the said directions to that effect through the speaking tube. She was probably going 6 knots, at least, at the time of contact. That rate of speed or even less in thick fogs in a frequented part of the ocean, as this was, has been

frequently condemned. *The Pottsville,* 12 Fed. Rept., 631; *The Luray,* 24 *Id.,* 751; *The Oregon,* 27 *Id.,* 751; *The Magna Charta,* 1 Asp. Mar. Cas., 153; *The Raleigh,* 441 Fed. Rept., 527; 44 *Id.,* 781; *The Martello,* 34 Fed. Rept., 71; 39 *Id.,* 507; 163 U. S. 173 64; *The Colorada,* 91 U. S., 692; *The Michigan,* 63 Fed. Rept., 280; *The City of New York,* 8 Blatch., 194; *The Alberta,* 23 Fed. Rept., 807, 813; Watts *v.* U. S., 123 *Id.,* 105, 112.

Moreover, she failed to observe the 16th Rule for preventing collisions at sea, providing:

"A steam vessel hearing apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over."

Prior to the Act, containing this rule, going into effect, under the general rule relative to vessels meeting in fog, with risk of collision, it was held that when a whistle was heard a few points on either bow, a steamer should stop and, if necessary, reverse, until the exact position and course of the other vessel could be ascertained. *The North Star,* 62 Fed. Rept., 71, and cases cited. Under the Act now in force, a failure to observe this precaution creates a presumption of fault—*The Bernard Hall,* 9 Asp. Mar. Cas., 300; *The Koning Willem I., Id.,* 425. In the latter case, it was said by Bucknill, J. (427):

"The question remains whether the *Koning Willem I* is also to blame. The reason given by her master for not stopping his engines when he first heard the whistle of the *Bittern,* or at the second or third whistle, was this—that his ship was going so slow, and the signal seemed to be so far off that he thought it better to wait until he heard it again, and that so soon as he heard it more ahead—that is, finer on the bow—he stopped his engines immediately.. Not having ascertained the position of the *Bittern* when her signals were first heard, in my opinion the engines should have been stopped, apart altogether from art. 16, but certainly in accordance 174 with that article. I think, and the Elder Brethren of the Trinity House who assist me agree, that it was in that weather impossible to have ascertained with any degree of certainty the position of the *Bittern*—that is, the bearing and distance of the *Bittern* from the *Koning Willem I.*—when her whistle was first heard, and the master of the *Koning Willem I.* admits as much himself. I think his duty was, clearly, to have stopped his engines then. With regard to what has been said about signals in a fog, I think I may usefully read part of a paragraph in Art. 18 of the Channel Pilot, Part I, 9th Edit.: 'Sound is conveyed in a very capricious way through the atmosphere. Apart from wind, large areas of silence have been found in different directions and at different distances from the origin of a sound, even in clear weather. Therefore too much confidence should not be felt in hearing a fog signal.' Now I will refer to the judgment of the President in the case of *The Bernard Hall* (*ubi sup.*), the language of which I adopt. The learned President said: 'The Elder Brethren point out that there would be extreme difficulty in knowing how far off the vessel would be in a fog, and therefore they do not think there was any such

ascertainment as to justify the *Holyrood*'—in this case the *Koning Willem I*—'in not complying with the clear terms of Art. 16 by stopping her engines when she first heard the whistle of the *Bernard Hall;* and that it is impossible to say that it would not have been a material matter if she had done so.' Each case must, no doubt, be considered on its own facts; and in this case I hold without doubt that the master of the *Koning Willem I.*, a man of great experience, should have grasped the fact that, as it was impossible for him to locate with any certainty, in that dense fog the bearing of the *Bittern* or her distance away, he should have stopped his engines on first hearing her whistle. Instead of that, he waited until he
175 found that the whistles indicated danger, because he heard them drawing ahead, proving that the *Bittern* was crossing his bows. So, in this part of the case, there has been a breach of the second part of Art. 16. As has been pointed out to me by the Elder Brethren, if you stop your engines you can hear better than you can when the noise of the engines and propeller is going on. If you stop your engines you lessen the danger and give yourself better information than if you go on with engines moving, as was done in this case; and it may be that if the master of the *Koning Willam I.*, had stopped his engines when he first heard the whistles, which he thought were far off, he might have come to the conclusion that the whistles were nearer than he thought they were—and I suspect they were nearer. I think it was negligent navigation on his part not to have stopped his engines when he first heard the whistle of the *Bittern* and to have waited so long as he did."

The *Saginaw* did not stop when the whistles of the *Hamilton* were heard nearly ahead, or not more than a half a point on her own port bow, but she kept going ahead under the same speed. The master left the pilot house and went forward to be able to see better as the vessel was high out of the water at the stem, on account of having only part of a cargo, which caused the bad trimming. When then the *Hamilton* appeared slightly over the port bow of the *Saginaw,* the master of the latter ordered the helm to be ported in the hope of escaping the collision.

The case now under consideration is readily distinguishable from the *Umbria.* There the principal fault was clearly with the *Umbria* and the only question to be determined with respect to the *Iberia* was, whether she was guilty of a legal fault contributory to the collision. It was held to be doubtful, in view of the *Umbria's*
176 movements, and, under the rule adverted to in that case, the *Iberia* was discharged. Here, the faults of the *Saginaw* are, at least, equal to, those of the *Hamilton* and would seem to be greater in that the *Saginaw's* speed was also excessive and she violated the 16th rule of navigation after the presence of the other vessel was discovered. The *Hamilton* in such respect was apparently without fault, as she stopped her engines when the other's whistles were heard and reversed, although without much effect in view of her previous speed.

The right of the petitioners to limit their liability is not seriously contested. The interest of the Old Dominion Steamship Company,

with pending freight and passage money, has been reported to be $318,373.78, and of the Clyde Steamship Company to be $531.90. A reference will be necessary to ascertain how the aggregate of these funds should be distributed among the various claimants. In that connection, a question has arisen with respect to the legal right of recovery of damages for loss of lives of several persons on the *Saginaw*, who were said to have been drowned in consequence of the collision. Such right has been vigorously disputed by the claimants of the vessels and before the cases go to a commissioner, it is necessary to determine the question. These persons were: Mary Eliza Jones, passenger; Alfred Gilmore, passenger; Edward S. Gosles, Chief Officer; Mary Hawley, passenger; Laura Hawley, passenger; William Morris, steward; Edmund Page, second cook; Peter Swanson, passenger.

The question of liability for loss of life on the high seas is admittedly a new one. I have been referred to a number of cases bearing indirectly upon it, but to none which can be regarded as an authority for the determination of the controversy. The
177 general principle undoubtedly is that without the aid of a statute there can be no recovery in such cases (*The Harrisburg*), 119 U. S., 199; *The Alaska*, 130 U. S., 201), but to meet that objection the claimants invoke the aid of the Delaware statute providing:

"SECTION 1.—That no action hereafter brought to recover damages for injuries to the person by negligence or default, shall abate by reason of the death of the plaintiff; but the personal representatives of the deceased may be substituted as plaintiff and prosecute the suit to final judgment and satisfaction.

SECTION 2.—Whenever death shall be occasioned by unlawful violence or negligence, and no suit be brought by the party injured to recover damages during his or her life, the widow of any such deceased person, or if there be no widow, the personal representatives may maintain an action for and recover damages for the death thus occasioned.

Passed at Dover, January 26, 1886."

Laws of Delaware, v. 13-14, 1866-7, pp. 28, 29.

That Act was amended March 9, 1901, as follows:

"SECTION 1.—That Section 2 of Chapter 31, Volume 13, of the Laws of Delaware, entitled 'An Act in relation to injuries or death occasioned by unlawful violence or negligence,' passed at Dover, January 26, 1886, be and the same is hereby amended by striking out all that part of said Section after the word 'Widow,' in the third line, and inserting in lieu thereof the following 'or Widower of any such deceased person, or if there be no widow or widower the
178 personal representatives may maintain an action for and recover damages for the death and loss thus occasioned.'

Approved March 9, A. D. 1901."

Delaware Laws 1901, Vol. 31, p. 500.

It appears that the owners of the vessels were corporations existing under the laws of the State of Delaware and the contention is

that the steamships are, therefore, portions of the territory of that State and subject to its laws: *The Scotia,* 14 Wall., 170, 184; Crapo *v.* Kelly, 16 Wall., 610; Wilson *v.* McNamee, 102 U. S., 572; *The Lamington,* 87 Fed. Rept., 752, 754; International Nav. Co. *v.* Lindstrom, 123 *Id.,* 475.

On the other hand the claimants contend that the question presented is, can there be a recovery in admiralty for loss of life upon the high seas where there is no element of contract involved, and argue that the actions having been brought against the *Hamilton* alone, any recovery must necessarily rest upon the theory of a maritime tort, committed by an outside colliding vessel and that the court is without jurisdiction in the premises. The argument made is ingenious and receives some support from the authorities cited: Rundell *v.* Campagnie Generale Transatlantique, 94 Fed. Rept., 366, affirmed 100 *Id.,* 655. It is urged that the fiction of a merchant ship being regarded as a floating portion of the country to which she belongs, should not be unduly extended, citing Halls's Treatise on International Law, 1904, pp. 249, 250, and that the theory applicable to merchant vessels must be one of contract; Lloyd *v.* Guibert, 1 Q. B. 115 (1865); *The Gaetano and Maria,* L. R., 7 P. D., 137-146. It is further urged that in England admiralty has no jurisdiction for loss of life (notwithstanding Lord Camp-
179 bell's Act) *The Vera Cruz,* 10 App. Cas., 59. Many authorities are cited to establish that in cases of tort upon the high seas, the admiralty courts of the United States will be governed by the general maritime law, which must be uniform, and it is further urged that uniformity in admiralty will be destroyed if the various state statutes are enforced. *The Scotland,* 105 U. S., 24; *The Belgenland,* 114 U. S., 355; *The Brantford City,* 29 Fed. Rept., 373; Benedict's Admy. §§74, 111; *The Vera Cruz (supra); The Harrisburg (supra);* Crapo *v.* Allen, 6 Fed. Cas., 763; *The Manhasset,* 18 Fed. Rept., 918; Workman *v.* Mayor, 179 U. S., 552.

There can be no doubt that natural justice requires that compensation should be made for loss of lives through negligence upon the high seas as well as upon land, where it is generally obtainable. In the Lindstrom case (117 Fed. Rept., 170), Judge Thomas gave the matter careful consideration and concluded that there was jurisdiction in the United States Circuit Court to grant compensation for an injury causing death on the high seas. He held that the steamship there, though without the actual limits of the state, was nevertheless a part of the territory of the State of New York and that all civil rights of action were determined by the laws of such State. This was reversed by the Circuit Court of Appeals on the ground that the vessel belonged in New Jersey, and as under the law of that state, the action was not brought within a year, as there provided for, no recovery could be had. Judge Wallace, in writing for the Circuit Court of Appeals said (123 Fed. Rept., 475, 476):

"The territorial sovereignty of a state extends to a vessel of the state when it is upon the high seas the vessel being deemed a part of
the territory of the state to which it belongs; and it follows
180 that a state statute which creates a liability or authorizes a recovery for the consequences of a tortious act operates as

efficiently upon a vessel of the state when the vessel is beyond its boundaries as it does when it is physically within the state. The inquiry in the present case, therefore, is whether a recovery was authorized by the statute of the state whose territorial sovereignty embraced the steamship. The action was brought upon the theory that the steamship was a vessel of New York, and seems to have been decided at the trial upon that theory. The complainant alleged that the death of the intestate and the negligence occurred upon a vessel of that state, and that the plaintiff was entitled to recover by virtue of the statute of New York in such case made and provided. Upon the trial the plaintiff was granted leave to amend the complaint by alleging that a statute of New Jersey provides that the administrator may recover for the benefit of next of kin 'in practically the same manner as the statute of New York,' but leave was not granted to amend by alleging that the steamship was a vessel of New Jersey. The complaint was not formally amended, and the trial judge treated the case as founded on the statute of New York."

In the case of McDonald *v.* Mallory, 77 N. Y., 546, a question arose as to liability for a death upon the high seas and in sustaining the jurisdiction of the Court, the question was fully discussed by Rapallo, J., *Inter alia,* he said (553):

"The facts alleged by the complaint, and admitted by the demurrer, present a strong case for the application of the rule that the laws of the State to which the vessel belongs follow her until she comes within some other jurisdiction. The defendants, by whom the wrong is alleged to have been committed, were, at all times up to its final consummation by the death of the plaintiff's intestate, citizens and residents of this State, and subject to its laws, and
181 the deceased was also a citizen of this State. The death was caused either by the illegal and negligent act done in this State of lading the dangerous and prohibited article on board the vessel and sending the deceased to sea in her thus exposed, or by the negligence or wrongful acts of the defendants committed at sea through their agents. The complaint does not distinctly specify which, but it must have been one or the other. If the latter, then at the place where the injury was consummated there was no law by which to determine whether or not it rendered the defendants liable to an action, unless the law of the State to which the vessel belonged followed her. In the present case the defendants were, at the time of the wrongful act or neglect, and of the injury, within this State and subject to its laws, and none of the objections, suggested in the various cases which have been cited, to subjecting them to liability under the Statute, for acts done out of the territory of the State, can apply. There can be no double liability, as suggested by Denio, J., in 23 N. Y., 467, 471, for the *locus in quo* was not subject to the laws of any other country; nor can it be said that the deceased or his representatives were under the protection of the laws of any other government, as is said in some of the other cases cited. It is a case where confusion or injustice can result from the application of the principle declared by the Supreme Court '(referring to Crapo

v. Kelly)' that the laws of the State as well as of the United States enacted within their respective spheres, follow the vessel when on the high seas."

Both vessels in the case at bar were a part of the territory of Delaware and as the law of that State gives a right of recovery, I see no sound reason why it should not apply and be enforced in these proceedings, and so hold, notwithstanding the fingenious argument presented to the contrary.

182 There will be decrees of limitation of liability and a reference to fix the amount of damages, with a provision for a proper distribution of the fund.

Dec. 7/04.

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the United States Court Rooms and Post Office Building in the Borough of Manhattan, City of New York, on the 31st day of January, 1905.

Present: Hon. George B. Adams, District Judge.

In the Matter of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship *Saginaw,* for a Limitation of its Liability.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton,* for a Limitation of its Liability.

Interlocutory Decree with Order of Reference.

Libels and petitions having been filed herein by the above-
183 named Steamship Companies to limit their respective liabilities as several owners of the Steamships *Saginaw* and *Hamilton* which were in collision on May 5th, 1903, under the provisions of the Act of Congress entitled "An Act to Limit the Liability of Ship-owners and for other Purposes," passed March 3, 1851, and the several acts and statutes amendatory thereof and supplementary thereto, for the limitation of liability for the loss, destruction, damage and injury occasioned by, or resulting from or in connection with said collision, and the subsequent sinking of the Steamship *Saginaw.*

And the said petitioners having also contested any and all liability resulting from or in connection with said disaster, independently of the limitation of liability so claimed as aforesaid, and monitions having been issued and published, followed by proofs of claims, with answers by several parties, claiming damage for loss, destruction, damage and injury, also for loss of life.

And the said two proceedings having come on to be heard together, and the proofs having been adduced therein, and arguments having been duly made, and after due deliberation, the Court having pronounced both vessels to blame for said collision, that the collision damages be apportioned, and also held that the Court had jurisdic-

tion to allow claims for loss of life, as appears from the written decision heretofore filed in these causes;

Now on motion of Robinson, Biddle & Ward, proctors for the Clyde Steamship Company, and of Wing, Putnam & Burlingham, proctors for the Old Dominion Steamship Company;

184 It is ordered that said petitioners, the Clyde Steamship Company and the Old Dominion Steamship Company are not entitled to exemption from all liability as claimed by them in their petitions, but that each of them is entitled to a limitation of its liability as provided in said Act of Congress, passed March 3, 1851, and the various Acts and Statutes amendatory thereof and supplementary thereto. And it is

Further ordered, that the default of all persons sustaining damage for any loss, destruction, damage or injury occasioned by or resulting from or in connection with the collision of said steamships and the sinking of said Steamship *Saginaw* on the 5th day of May, 1903, who have not presented their claims as aforesaid, be, and the same is hereby entered herein, and all said claims which have not been presented as aforesaid be and hereby are forever barred.

And it is further ordered that the default of all persons who have not perfected their appearance and filed answers in said proceedings be likewise entered herein, and that such persons as have filed claims, but made no answer to the said petitions, be bound by the decision made upon the hearing herein.

And it is further ordered that the petitioners herein, and all persons who have filed claims in either of these proceedings shall be and hereby are given five days from the date of the entry of this order, within which to file exceptions or objections to any other such claims filed herein and reported by said Commissioner; and

It is further ordered that it be, and hereby is, referred to
185 Henry W. Goodrich, Esq., a Commissioner of this Court: (1) to take proof as to the amount, validity and priority of all claims for property losses to which exceptions shall be filed as aforesaid, and to report upon the total damages sustained by the two colliding vessels, as well as by the loss and destruction of the cargo and effects upon the *Saginaw;* (2) that as to such claims as are already filed to recover for personal injuries and for loss of life of the persons who may have perished by or in consequence of said collision, the Commissioner report the amount of the damages in each case with all evidence taken, or introduced, before him, touching such claims so as to enable the court thereafter to determine the amount of damages; (3) that such report also state the facts and amounts showing the proper ultimate apportionment and adjustment of all collision claims and liabilities, as between the two petitioners herein.

It is also ordered that, until the further order of this Court, all persons whomsoever claiming, or who may hereafter claim for any loss, destruction, damage or injury occasioned by or growing out of, said collision, be and the same hereby are restrained and enjoined from bringing, commencing, instituting, or further prosecuting, any suit or suits, or proceedings whatever, upon any cause of action

against the Clyde Steamship Company, or against the Old Dominion Steamship Company or the Steamship *Hamilton* for any loss, damage or injury done, suffered or occasioned by reason of the loss and disaster caused by the collision between said steamships on May fifth in the year 1903.

GEO. B. ADAMS.

[Endorsed:] Interlocutory Decree—Entered January 31st, 1905.

186 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for a Limitation of Liability as Owner of the Steamship *Hamilton*.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY for Limitation of Liability as Owner of the Steamship *Saginaw*.

Before Henry W. Goodrich, Esq., U. S. Commissioner.

NEW YORK, *March 3rd*, 1905.

Appearances.

Messrs. Wing, Putnam & Burlingham, for The Old Dominion Steamship Company;

Messrs. Robinson, Biddle & Ward, for The Clyde Steamship Company, The St. Paul Fire & Marine Company, British American Insurance Company, Aetna Insurance Company, and the Atlantic Mutual Insurance Company.

Messrs. Hunt, Hill & Betts, for certain claimants.

187 Messrs. Convers & Kirlin (Mr. Woolsey), for certain claimants.

Mr. A. L. Fullman for Primus Gilmore, administrator of Alfred Gilmore, deceased.

Mr. PUTNAM: Mr. Francis D. Winston, a proctor of record for S. B. Kenney, administrator, has written to us stating that he is actually engaged in the Legislature of North Carolina and I have taken the responsibility of telling him that he need not attend at this hearing.

EDWARD P. GREENE, being duly sworn as a witness on behalf of The Old Dominion Steamship Co., testifies as follows:

Examined by Mr. PUTNAM:

Q. You are connected with the office of Johnson & Higgins in this building?

A. Yes, sir.

Q. Did you have personal charge of the adjustment and settlement of any claims for loss of property in connection with the collision between the steamers *Hamilton* and *Saginaw*?

A. I examined and settled all of the cargo claims.
Q. And these were compromised and paid during the year 1904?
A. In May, 1904.
Q. Have you brought here and do you produce a statement showing the total amount of that settlement and also the items?
A. Yes, sir, the total amount of the cargo settlement and the items which make up the summary, the total.
Q. Giving the shipments in each case and also the calculation of interest and the percentage of the settlement?
A. Yes, sir; we have taken the claims, totalled them up and taken the percentage of them and added the interest to it.
188 Q. And the actual cash amount paid that passed through Johnson & Higgins was what sum?
A. Well, we paid in respect to the cargo claims $109,815.31 and then we sent a further check to you, I am not certain whether all these personal effects claims were in addition to the White, Williamson amounts.
Q. You refer to the items given and you will see that it is stated they are personal effects.
A. White, Williamson & Co. is cotton goods claims.
Q. These were settled through attorneys?
A. The $109,815.31 is the cargo claims. That is less the proceeds arising from the sale of damaged cargo.
Q. Now, the total amount that you paid for both personal effects and cargo is what?
A. $11,528.07.

Mr. PUTNAM: We offer this statement in evidence.
It is received in evidence and marked Petitioner's Exhibit 1, March 3rd, 1905.

Q. Have you the receipts for the payment that you have mentioned?
A. I have two receipts here covering the cargo claims, for all except White, Williamson & Co., S. Moscowitz & Co. and the Eagle Skirt Company claims that were settled by Mr. Putnam. (The receipts are produced.) The first is from Mather & Co. May 24th, marked Petitioner's Exhibit 2, and the second also from Mather & Co., May 26th, marked Petitioner's Exhibit 3. The first is $53,626.67 and the second one $56,188.64.

Mr. Putnam states that he will produce receipts for the other claims that have been settled with proctors who have appeared in this cause.

It is stipulated between the Proctors for the *Hamilton* and
189 the Proctors for the *Saginaw* that the damages suffered by the total loss of the *Saginaw* in the collision out of which these proceedings arise were the sum of $90,000.

It is further stipulated between the Proctors that the damage to the *Hamilton* by the collision consisted of repairs and particular average amounting to $4,083.08 and demurrage for fourteen days at $500 a day, $7,000, making a total of $11,083.08.

It is stipulated among the Proctors appearing that any part of the testimony heretofore taken may be offered in evidence before the Commissioner.

Adjourned to March 10th, 1905, at 2 o'clock P. M. Last Exhibit: Petitioner's Exhibit No. 3.

In re Petition of OLD DOMINION S. S. COMPANY.

In re Petition of CLYDE S. S. COMPANY.

NEW YORK, *March 10th*, 1905.

Met pursuant to adjournment;

Same appearances as before.

Mr. Putnam, in behalf of the Petitioners, offers the following papers in evidence:

Release from Norris Poiner, of Virginia, for $189.92, being $144.87 loss of effects and $45.05, loss of cash.

It is received in evidence and marked Petitioner's Exhibit No. 4, March 10th, 1905.

190 Release from S. Jernigan, of Virginia, for $35.59 being $27.09 for loss of effects and $8.50 loss of cash.

It is received in evidence and marked Petitioner's Exhibit No. 5, March 10th, 1905.

Release from Willie Pinner, of Virginia, for $197.43, being $76.18 for loss of effects and $21.25 loss of cash.

Received in evidence and marked Petitioner's Exhibit No. 6, March 10th, 1905.

Release from David Roland, of Atlantic City, N. J., for $438.91, being $103.91 for loss of effects, $85.00 loss of cash and $250.00 for personal injuries.

It is received in evidence and marked Petitioner's Exhibit No. 7, March 10th, 1905.

Release from John Reese, of Philadelphia, for $68.85, being $56.10 loss of effects and $12.75 loss of cash.

It is received in evidence and marked Petitioner's Exhibit No. 8, March 10th, 1905.

Release from Judson Sivills, for $257.68, being $90.68 loss of effects, $17.00 loss of cash and $150.00 personal injuries.

It is received in evidence and marked Petitioner's Exhibit No. 9, March 10th, 1905.

Of the following original releases counsel for Petitioner produces the original and by consent files a copy thereof in place of the originals.

Release from Edward B. Cole, of Philadelphia, for $2,599.57, being $2,000 for personal injuries; $63.75 loss of personal effects; $510 loss of cash; interest on last two items $25.82.

191 It is received in evidence and marked Petitioner's Exhibit No. 10, March 10th, 1905.

Release from Harry F. Winters, Jr., of Camden, N. J., for $543.30,

being $500 for personal injuries; $41.44 loss of personal effects; $1.86, interest on last item.

It is received in evidence and marked Petitioner's Exhibit No. 11, March 10th, 1905.

Release from John H. Trevor for $2,666.54, being $2,500 for personal injuries; $31.87 loss of personal effects; $127.50 loss of cash; interest on last two items $7.17.

It is received in evidence and marked Petitioner's Exhibit No. 12, March 10th, 1905.

Release from B. Hood, of Haddon Heights, N. J., for $585.27, being $500 for personal injuries; $81.60 loss of personal effects; $3.67 interest on last item.

It is received in evidence and marked Petitioner's Exhibit No. 13, March 10th, 1905.

Adjourned to Thursday, March 16th, 1905, at 2 o'clock P. M.

In re Petition of OLD DOMINION S. S. Co.

In re Petition of CLYDE S. S. Co.

NEW YORK, *March 16th*, 1905.

Met pursuant to adjournment.

Present: Same counsel as before.

At the request of Mr. Putnam, adjourned to March 23rd, 1905, at 2 o'clock P. M.

192 *In re* Petition of OLD DOMINION S. S. Co.

In re Petition of CLYDE S. S. Co.

NEW YORK, *March 23rd*, 1905—2 o'clock p. m.

Met pursuant to adjournment.

Present: Same counsel as before.

Mr. BETTS: I offer in evidence the certificate of the Circuit Court of Norfolk County, Va., of the issue of letters of administration to Joseph Lawson on the estate of Edmund Page.

It is received in evidence and marked Lawson's Exhibit No. 1, March 23rd, 1905.

I also offer in evidence depositions of Joseph Lawson and Lucretia Stokes, taken at Norfolk, Va., June 28th, 1904 (pp. 221-232 of this Record).

It is received in evidence and marked Lawson's Exhibit No. 2, March 23rd, 1905.

I also offer in evidence the deposition of Lino Arguinchona, James Cooper and Nehemiah C. Bristow, taken at Philadelphia on the 10th day of June, 1904 (pp. 234-267 of this Record).

It is received in evidence and marked Lawson's Exhibit No. 3, March 23rd, 1905.

I also offer in evidence the deposition of Nehemiah C. Bristol and Lino Arguinchona, taken at Philadelphia, April 4th, 1904, on behalf of Mary Swanson (pp. 268-297 of this Record).

It is received in evidence and marked Swanson's Exhibit No. 1, March 23rd, 1905.

193 I also offer in evidence the deposition of Mary Swanson, J. Homer Trevor and Ambrose Aman, taken at Philadelphia, December 28th, 1903, on behalf of Mary Swanson (pp. 298-306 of this Record).

It is received in evidence and marked Swanson's Exhibit No. 2, March 23rd, 1905.

I also offer in evidence the certificate of the Register for the City of Philadelphia that letters of administration on the estate of Peter Swanson were granted to Mary Swanson.

It is received in evidence and marked Swanson's Exhibit No. 3, March 23rd, 1905.

I also offer in evidence the deposition of James Cooper, taken June 24th, 1904, at Philadelphia, and the deposition of George C. Ross, taken July 14th, 1904, at Philadelphia on behalf of claimant James Cooper.

It is received in evidence and marked Cooper's Exhibit No. 1, March 23rd, 1905.

Mr. Woolsey offers the following parts of the trial depositions in evidence in pursuance of the stipulation entered into between counsel for all parties at the hearing on March 3d, 1905, in behalf of the claimants (see page 212 of this Record).

Tunnell—Deposition of July 1, 1903, pages 219, 220, 223, 224, 231, 239, 240, 253 (pp. 115, 116, 119, 120, 127, 135, 136, 149 of this Record).

Tunnell's deposition taken in Court on November 1, 1904 (pp. 181-187 of this Record).

Seltzer—Pages 273, 274, 277 (pp. 171, 172, 175 of this Record).

Warrington—Page 3 (p. 88 of this Record).

194 Molle—Pages 24, 33, 36 (pp. 307-309 of this Record).

Adjourned to Tuesday noon, March 28th, 1905, at Hotel Warwick, Newport News, Va.

Depositions Offered in Evidence on Reference.

The depositions of Joseph Lawson and Lucretia Stokes, taken before me, Leon T. Seawell, a Notary Public for the Corporation of the City of Norfolk, Virginia, on June 28th, 1904, at 1 o'clock P. M., at 312 Main Street, pursuant to the annexed notice, to be read as evidence in behalf of the claimant, Joseph Lawson, in the above entitled cause.

It is stipulated and agreed that signing, filing and certification is waived; copy to be furnished petitioner; costs to be taxed.

Present: W. S. Woodworth, Esq., for Claimant, Joseph Lawson; Hughes & Little (Mr. Little) for Petitioner.

Counsel for the Petitioner objects to these depositions upon the ground that no claim has been properly filed by Joseph Lawson.

JOSEPH LAWSON, being duly sworn, testified as follows:

Examined by Mr. WOODWORTH:

Q. What is your name?
A. Joseph Lawson.
Q. Where do you reside?
A. At Pinner's Point.
Q. How old are you?
A. Now 52 years old, going on 53.
195 Q. What is your business?
A. Well, I works at the wharf, general work, labor.
Q. You have been duly appointed administrator of the estate of Edmund Page?

Question objected to as the administration is a matter of record, which is the best evidence.

A. Yes, sir.
Q. Were you acquainted with Edmund Page during his life time?
A. Was I acquainted with him?
Q. Yes?
A. Yes, sir, I was acquainted with him for twenty-five years I reckon, in the neighborhood of it.
Q. Are you any relation to Edmund Page?
A. No, sir, no relation. He was my brother-in-law. I married his oldest sister.
Q. What was the business of Edmund Page, what did he do for a living?
A. He was a cook.
Q. On what?
A. On the *Saginaw*.
Q. Of what line?
A. Philadelphia line, Clyde line.
Q. Do you know what he earned as cook on the *Saginaw* of the Clyde Line?
A. Yes, sir.
Q. What did he earn?

Question objected to unless the basis of his knowledge is disclosed.

A. Twenty Dollars a month.
Q. Had he any other income to your knowledge in addition to that?

Objected to.

A. He told me several times that the steward always gave
196 him from $10 to $12 a month clear of his wages. He picked up that extra.

Counsel for petitioner objects to any testimony with reference to what Page might have told the witness.

Q. He told you that the steward gave him from $10 to $12 in addition to the $20 that he received as a salary?

A. Yes, sir, every month; enough to clear his little expenses outside.
Q. Did he have a mother?
A. Yes, sir.
Q. Is she living now?
A. Yes, sir; there she is right behind me.
Q. Did he contribute any of his earnings to her support?

Question objected to.

A. All of it, you may say. He took care of her from his boyhood days up until he died.
Q. Is his mother married or a widow?
A. Single, has been for years.
Q. She is a widow then?
A. Yes, sir.
Q. Do you know how much he contributed to his widowed mother's support from his earnings?
A. Well, he told me that it took nearly all that he could make.

Answer objected to as hearsay.

Q. Do you know the age of his mother?
A. No, sir, I can't say I do exactly.
Q. What has been the source of her support or revenue since the death of her son Page, if any?

Question objected to.

197 A. Of course, I give her what I am able to give her; she is only living on the charity of the people.
Q. How long before the death of Page did you see Page?
A. I saw him—well, the ship was sunk next day morning, he left here that night about half-past six. I was a foreman for the company at that time, and I used to close the ports, and I saw him and told him good-bye when the ship le-t the dock.
Q. Then you saw him the night before he died?
A. Yes, sir.
Q. What was the general state of his health?
A. Fine. I don't know of any sickness he ever had, but the time that the smallpox was going round here he had a slight case of that.
Q. How old a man was Edmund Page at the time of his death?
A. Well, I don't know exactly his age, but I think he was between 31 and 33, somewhere along there. He might have been 35. I don't think he was any older than that.
Q. What kind of a looking man was Edmund Page in appearance?
A. Well, he was a man that looked to weigh about 150 pounds, short, stout, dark, black mustache, very heavily built, but he was short, looked to be about the height of you, but he was not quite as bulky as you. He weighed about 150.
Q. Is that all you know?
A. Yes, sir, that is all.

Cross-examination by Mr. LITTLE:

Q. How long have you been working for the Clyde Line?
A. Been working for them about a little over two years—was foreman—turning into three years, down here at this office?
Q. When did you leave them?
A. I left them about three weeks ago; two, three or four weeks ago.
198 Q. And you had been with them two years prior to that?
A. Yes, sir.
Q. Where was Page at the time you say you told him good-bye?
A. In the galley cooking.
Q. And where were you?
A. Standing on the dock. I close the ports, and his galley is right by the forward port and I could look up and see him. He came to the door and I waived my hand at him and told him good-bye.
Q. Did you stay there till the ship left?
A. Yes, sir. It was my business to stay there until the ship left and see that all the ports were closed. I was foreman for them.
Q. You don't know anything about this $10 or $12 a month you were telling about except what Page told you?
A. No, sir. I only know his wages.
Q. How do you know what his wages were?
A. Because he told me and the steward told me.

Q. The testimony, then, with reference to the wages of the deceased is objected to for the reason that it appears to be hearsay, based on statements made by others.

WITNESS: I just wish to say I know his wages because they owed him one month's wages when he was drowned, and he was paid from this office down here. They sent Mr. Lindsay over to pay it and took a receipt for it.
Q. That was money that was due him at that time?
A. It was the month's wages due him when he was drowned.
Q. Do you know what time he joined the *Saginaw?*
A. I don't know, sir, I know he was on there some time.
Q. This incident happened at what time?
A. I don't know at what hour.
Q. Do you know what time of the month his wages commenced?
A. No, sir.
199 Q. Where does his mother live?
A. The next street from me, at Pinner's Point.
Q. Does she own the house?
A. No, sir, she rents.
Q. Who lives with her?
A. Her grandson lives with her.
Q. How old is he?
A. About 25 years old.
Q. What does he do?
A. Works on the dock.
Q. Anybody else?

A. No, sir.
Q. Does she have any occupation herself?
A. No, sir, she is not able to do anything.
Q. Doesn't do anything at all?
A. No, sir, she has been almost an invalid for the last three or four years.
Q. How do you know what Page's age is?
A. I judge, because I have been in the family, I married in the family when I was a young man; I had been married 22 years when I lost my wife, and he was quite a small boy and didn't look to be more than six years old when I married. I judge from the time that I got married until the time that he died, and he was about 33 or 34 years old, but I could not be certain.

Redirect examination by Mr. WOODWORTH:

Q. Then, in addition to the statement that Edmund Page made to you that he received the sum of $20 a month as salary, Mr. Lindsay came over after the death of Edmund Page and paid to his mother the sum of $20 and said that was his month's salary?
A. Yes, sir, called me for a witness that he paid it to her.
Q. And said that the sum of $20 was a full month's wages due him from the Clyde Line?
A. Yes, sir.

200 LUCRETIA STOKES, being duly sworn, testifies as follows:

Examined by Mr. WOODWORTH:

Q. What is your name?
A. Lucretia Stokes.
Q. Are you the mother of Edmund Page, who is deceased?
A. Yes, sir, I certainly is his mother.
Q. Where do you live?
A. I live at Pinner's Point.
Q. Do you know your age?
A. I am about sixty years old.
Q. What do you do for a living?
A. Well, I tries to wash a little bit. I can't do nothing hardly on account of my feet is swollen up and I got the rheumatism so bad I can hardly get around. I washes one day in the week, or two. It is a hard struggle to get along.
Q. How many sons had you?
A. How many sons have I? I haven't got but one now.
Q. One now?
A. Yes, sir.
Q. What did your son Edmund Page do for a living?
A. He worked on the boat, on the *Saginaw*.
Q. Is he living or dead?
A. He is dead I reckon. I haven't seen him. I reckon he is dead.
Q. Do you know what his salary was?

A. $20 a month, I think.
Q. $20 a month?
A. Yes, sir.
Q. Do you know what he did on the *Saginaw,* what his business was?
A. He was cook.
Q. Do you know what he earned as a cook on the *Saginaw?*
A. What he earned?
Q. A month?
A. $20.
Q. Did you live with him?
A. When he came off the boat he would always come there.
Q. Did he support you?
A. Yes, sir, that he did. Rented the house and put me in.
201 Q. Did he pay the rent of the house?
A. Yes, sir, that he did.
Q. Did he pay for all your provisions?
A. Yes, sir.

Question objected to as leading.

Q. Did he support you?
A. Yes, sir.
Q. What did he do by way of support for you?
A. He bought provisions for me to eat and he bought wood for me and he gave me clothes and all that I needed.
Q. Do you own the house that you live in?
A. No, sir, that I do not.
Q. Did you pay the rent for that house when he was living?
A. He gave me the money and I paid it.
Q. How much money did he give you a month?
A. He gave me sometimes $13 or $14 or $15.
Q. Every month?
A. Yes, sir, when he didn't have to buy his clothes and tobacco and things like that that a man uses.
Q. The months that he bought his clothes how much did he give you—those months that he bought his clothes?
A. He didn't give me more than $6, $7, $8 or $9, something like that.
Q. But any other months that he didn't buy his clothes he gave you from $15 to $16, you say?
A. Yes, sir.
Q. Since his death how have you lived and earned your living?
A. I couldn't tell you hardly. I have gotten along mighty poorly. I have been getting along mighty bad.
Q. Have you had any difficulty in paying your rent and buying your provisions?
A. I had no difficulty more than I have been buying them and I have not been able to pay for them, and I rent a house and haven't been able to pay for it.
Q. Are you behind in your rent?

A. Yes, sir, that I is behind.

202 Q. Have you been threatened with ejectment from the house for not paying the rent?

Question objected to as leading.

A. No, sir, they have been very kind to me. I have told them that I would pay it when I could. They have been very nice to me.
Q. And your sole support was your son, Edmund Page?
A. Yes, sir.
Q. Who is now dead?
A. Yes, sir.

Questions objected to as leading and because the witness has not so testified.

Q. What was his condition of health prior to his death?
A. Good health, and he looked as well as I ever seen him when he went away that night.
Q. About how old was he?
A. He was somewheres about 35, 34 or 35.
Q. What kind of a looking man was he in appearance?
A. Exactly like me,—you see me you see him.
Q. How would you describe him?
A. He was a short, thick-set man, wasn't very tall, just about your height, I reckon, with a little mustache.
Q. Little mustache?
A. Yes, sir.

Cross-examination by Mr. LITTLE:

Q. Who do you rent from?
A. Mr. Harper.
Q. How long have you been living in that house?
A. I have been living in there three or four years.
Q. Were you living in that house before your son died?
A. Yes, sir.
Q. Who has been paying the rent that you paid since his death?

A. I have been trying to pay it the best way I could, pay
203 a dollar at a time sometimes. I have gotten back now, I haven't been able to work.

Q. Has anybody helped you to pay the rent since his death?
A. No, sir.
Q. Not a cent?
A. My daughter in New York sent me some money.
Q. How much has she sent you?
A. Not more than ten dollars. That was last year.
Q. Is ten dollars all she has ever sent you?
A. All she sent me since he died.
Q. Now, you say your son paid your rent and bought your provisions and your wood, and in addition to that he gave you from $12 to $15 a month?
A. Yes, sir.

Q. Did you mean that he gave you the things or that he gave you the money?

A. Oh, no, sir; he gave me the money to buy them with.

Q. Can you tell me any one month in the year prior to his death that he gave you as much as $15?

A. Can I tell you one month?

Q. Yes, that you can recollect now within a year prior to his death, during the year before his death?

A. No, sir, I couldn't tell what month it was, but I could tell he gave it to me.

Q. Can you tell me any month that he gave you as much as ten dollars before his death?

A. I couldn't tell what month it was to save my life. I don't know whether it was August or June or July.

Q. Now, Auntie, can you tell me how many months during the twelve months before his death he gave you as much as $10?

A. I reckon he gave it to me some three or four months, or more than that. I don't remember.

Q. Can you tell me what months they were?

A. No, sir, I couldn't tell you because I never noticed. I tell you the truth, sir.

204 Q. Can you tell me how many months during the twelve months before his death he gave you as much as $5?

A. He gave me as much as $5 the month before he died. He came there and brought me $8 or $9, and he got a suit of clothes and he brought that money there, but I don't know what month it was.

Q. Did he ever call on you to let him have any money before his month was up?

A. Sometimes he would bring money there and he would come there and ask me during the month—like the month was up to-day, and he would come next week and ask me to give him two or three dollars, yes, he did, and he would do it sometimes and sometimes he wouldn't. He would give it all to me.

Q. Have you got any daughters living now?

A. Haven't got but one and she is in New York.

Q. And you have one son living?

A. He is in Philadelphia and he has been there a long time.

Q. And neither one of them do anything for you?

A. No, sir.

Q. Who do you wash for?

A. I don't wash for anybody but just one family over there.

Q. How big a family is it?

A. Some four or five. Just he and his wife and two or three children.

Q. You don't do washing for anybody else?

A. No, sir.

Q. Now, do you know anything more about what his wages were than what he told you?

A. No, sir, I don't know any more than what he says.

Q. Do you know, as a matter of fact, that he was on the *Saginaw* at the time she was sunk?

A. Yes, sir, he was on there; he never has returned home, he must have been on there. People who worked on there said he was on there.

Q. You don't know yourself he was on there?

205 A. No, sir, I tell you the truth, I don't know it, I heard it from other people. My son-in-law said that he talked to him.

Q. Do you know how long he had been at work on the steamer at the time of his death?

A. No, sir, I can't even tell; he had been there twelve months I believe.

Q. And where had he been working before that, do you remember?

A. He used to work over here.

Q. What did he do here?

A. Used to work around here on the wharf.

Q. Did he give you as much before he went to work for the Clyde Line as he did afterwards?

A. Used to give me all the time, pay my rent all the time.

Q. How much was the rent?

A. My rent? I got a small house; it wasn't more than $4 a month for the house.

Redirect examination by Mr. WOODWORTH:

Q. You say that he never failed to give you less than $9 a month while he was working on the *Saginaw?*

A. Yes, sir.

Question objected to.

Q. And you say he never gave you more than $15 to $16 a month?

A. Yes, sir.

Recross-examination by Mr. LITTLE:

Q. You can't recall but one time, as I understand, that he gave you as much as $8 or $9?

A. Yes, sir, I can recollect more than one time.

Q. How many times?

A. I couldn't recollect how many times.

Q. Twice?

206 A. I reckon it was more than twice. I reckon my child would give it to me more than that.

Q. I am just trying to get at it, auntie?

A. I couldn't tell how many times.

Q. You can't tell me how many times he gave you $5 a month?

A. No, sir.

Deposition taken the 10th day of June, 1904, before Francis C. Adler, Esq., a Notary Public for the Commonwealth of Pennsylvania, at this office, No. 722 Bourse Building, Philadelphia, pursuant to notice under Section 863 of the Revised Statutes, and which said notice is hereto attached. The said testimony being taken on behalf

of the claimant of Joseph Lawson. It is agreed that signing, sealing and certification of this deposition is waived.

Present: Francis S. Laws, Esq.—Proctor for Claimant.
N. Du Bois Miller, Esq., Proctor for Respondent.

(Counsel for the Respondent make objection to the taking of this testimony on the ground that no claim has been properly and duly filed by the Petitioner, Joseph Lawson, Administrator, etc.).

ANTONIO ARGUINCHONA, being duly sworn according to law, was examined as follows:

By Mr. LAWS:

Q. Mr. Arguinchona, you are an oiler on board of the steamship *Winyah* now?
A. Yes, sir.
Q. What is your nationality?
A. Spain.
Q. Were you on board of the steamer *Saginaw* at the time of the collision?
A. Yes, sir.
207 Q. What date was the collision?
A. The 5th of May.
Q. That is the collision between the steamship *Saginaw* and the steamship *Hamilton?*
A. Yes, sir.

By Mr. MILLER:

Q. The present year?
A. Last year, 1903.
Q. May of 1903?
A. Yes, sir.
Q. What was your position on board of the vessel?
A. I was oiler.
Q. Were you on board of the ship *Saginaw* when the collision occurred?
A. Wes, sir.
Q. How long had you been on board of that vessel?
A. 15 months.
Q. Did you know Edmund Page?
A. Yes, sir.
Q. What was his position on the boat?
A. Assistant cook.
Q. About how old a man was he in your judgment?
A. About 30 years old.
Q. How long had you known him?
A. About three or four months.
Q. Do you know whether or not he was on board on the trip when the collision occurred?
A. Yes, sir.
Q. I mean on board of the *Saginaw?*

A. Yes, sir.
Q. Did you see him on board on that trip?
A. Yes, sir.
Q. Did you see him at or near the time of the collision?
A. Yes, sir.
Q. Now, will you just tell us in your own way whether you saw him after the collision, and what you said to him and what he said to you and what took place?
A. All right, I will. It was quarter of five in the morning when I heard a noise and I heard them strike—the two ships struck together, and it waked me up and I jumped off on deck and
208 I seen the cook was making breakfast already for the crowd.
Q. Who do you mean by the cook?
A. The assistant cook.
Q. This man?
A. Yes, sir; Edmund Page; and I says, "What are you doing?" He says: "I am getting breakfast ready for the men." I says: "You had better leave that alone and look out for yourself," and he says: "That is nothing," and then I jumped down in the engine room. I was down in there only a few minutes until I saw the water coming through the skylight and I jumped off on deck and I put life preservers on me, and then I helped some of those fellows to drop the boat overboard and lower the boat overboard.
Q. Did you see Page at that time?
A. No, I did not see him at that time, and I went forward. That is the time I saw Page there forward.
Q. On deck, was he?
A. On deck. He was crying and I says, "Don't cry here, because you had better throw some of those hatches overboard," and he helped me pull them overboard, and then I went to the mast and then he run back to the ship and the water was about my knees when I saw him the last.
Q. Was he in the water or not at that time?
A. He was in the water and I was in the water to about my knees, and then I jumped through the mast and he ran back to the ship.
Q. You were both on deck at the time?
A. We were both on deck at the time.
Q. How soon after that, did the ship go down?
A. Only just a few seconds. It di-n't give me any chance to go more than half way up the mast.
Q. The vessel went down by the stern first?
A. The stern first.
Q. And he ran aft?
A. Yes, sir.
209 Q. And then within a few seconds, the vessel sank?
A. Yes, sir.
Q. And the last you saw of him was a few seconds before the *Saginaw* sank while he was on deck?
A. Yes, sir; that was when I last saw him.
Q. You got up in the mast, did you?
A. Yes, sir; I got up in the mast.

Q. And then what became of you?
A. The water swept me right out.
Q. And then you were picked up?
A. I was picked up about ten minutes after that.
Q. By whom?
A. By the *Hamilton's* row boat.
Q. Do you know where this man Edmund Page lived?
A. I don't know where he lived. I think he lived either at Norfolk or Pinner's Point.
Q. Your home is in Spain, is it?
A. Yes, sir.
Q. Have you any home in this country other than the ship?
A. No, sir; only the ship.
Q. You came in last night on the ship?
A. We got in last night about eight o'clock.
Q. And you are going to leave to-morrow morning on the ship, are you?
A. Tomorrow between 12 and 1 o'clock.

Cross-examination by Mr. MILLER:

Q. How large a crew was there on the *Saginaw?*
A. Six of us, six firemen, three oilers, three engineers, steward, assistant cook, stewardess, pantryman and a waiter, two mates and the captain.
Q. How many sailors?
A. Six sailors.
Q. Is that all?
A. Yes, sir; and six firemen, three oilers, two mates and a captain.
Q. Where did Page join the ship?
A. What do you mean?
Q. Where did he join the *Saginaw?*
A. Here in Philadelphia.
Q. Where did you join her?
A. I joined her down here in Philadelphia.
210 Q. How long had you been on her before Edmund Page shipped on her?
A. Fifteen months before the collision.
Q. I mean before Page came on her?
A. I was in her about a year before he came on her.
Q. He had been on her, you said, about three or four months, is that right?
A. Yes, sir; about that.
Q. You know nothing about him other than what you saw of him on board of the ship?
A. No, sir; just what I saw of him on board of the ship.
Q. Were you swimming around when you were rescued, or were you clinging to the mast?
A. No, I was swimming around until I reached one of the hatches and then I got my arm around one of the hatches and that kept me up.
Q. How many of the hatches were there?

A. About half a dozen.
Q. Floating around?
A. Yes, sir; the first time, that was the hatches that we dropped overboard, and after, you see she sank down, all the hatches were floating all around, all the pieces of wood and ladders and everything was floating there.
Q. There were a good many spare pieces of timber floating about?
A. Yes, sir; plenty of them.
Q. Was it broad daylight?
A. That is just the break of daylight.
Q. It was about five o'clock?
A. Yes, sir.
Q. On the 5th of May?
A. The 5th of May.
Q. Clear day or fog?
A. Fog.
Q. Where did this collision occur?
A. It was near Winter Quarter Light-ship.
Q. When you were rescued by the boat of the *Hamilton*, did you go right back to the *Hamilton?*
A. Yes, sir.
Q. You didn't hang around any longer after that?
A. No, sir.
211 Q. You don't know whether there were any other boats that came there after that or not?
A. No, sir.
Q. But most of your crew were picked up by the boat of the *Hamilton?*
A. A part of it; a big part of it.
Q. What became of the others?
A. The others in the *Saginaw's* row boat. Two row boats was overboard.
Q. Had your row boats been put out before she sank?
A. Yes, sir.
Q. They were manned?
A. Yes, sir.
Q. Properly manned?
A. Yes, sir.
Q. And they rescued you and a good many of the crew, who were in the *Saginaw* and who were not rescued by the *Saginaw's* boat?
A. Yes, sir; they were rescued by the *Hamilton's* boat, but the most of them was on the *Saginaw's* boat.
Q. But I say they rescued a number who were not in the *Saginaw's* boat.
A. Yes, sir.
Q. How many on the *Hamilton* were with you?
A. I couldn't tell that. There was about eight of them, I know.
Q. In the *Hamilton's* boat?
A. Yes, sir; and one was drowned.
Q. One drowned from the *Hamilton's* boat?

A. We picked her up when she was drowned. That was the stewardess.

Q. She was picked up dead?

A. Yes, sir; she was picked up. She was dead when she was picked up.

Q. You never saw Page after the ship went down?

A. No, sir; I never saw him since.

Q. And you don't know really what happened to him after that?

A. No, sir.

Q. What sort of a man was Page?

A. He was a round face man; he was a stout fellow.

Q. An American?

A. Yes, sir; so he said he was an American.

212 Q. He spoke like an American?

A. Yes, sir; he spoke like one.

Q. I think you said he was about 30 years old?

A. That is what he looks to me.

Q. About your height or taller?

A. He was a little bit taller than me.

Q. How tall are you?

A. Five feet six.

Q. He was then a man of five feet, seven or eight?

A. About seven.

Q. Dark or light?

A. Dark.

Q. Dark hair and dark skin?

A. Yes, sir; all dark. Dark hair and dark skin.

Q. Did he have any hair on his face?

A. No, sir; very lit-le.

Q. Clean shaven?

A. Not clean shaven. He used to have a lit-le mustache, but very little.

Q. Was there any peculiarity about his appearance, any marks or scars?

A. No, I never noticed any.

Q. Dark eyes?

A. Dark eyes.

Q. What sort of a nose had he?

A. Flat.

Q. Flat nose?

A. Yes, sir.

By Mr. LAWS:

Q. Mr. Arguinchona, did you see the people who were picked up after they got on the *Hamilton?*

A. Yes, sir.

Q. Was this man Page among any of them?

A. No, sir.

Q. He was not among any of them?

A. No, sir.

Q. Did you see Mr. Bristow on the boat about the time of the collision?

A. Yes, sir.

Q. Where did you see Bristow then?

A. I seen him on the *Hamilton* after he had come from the row boat.

Q. Did you see him anywhere near this man Page about the time of the collision?

A. Yes, sir; he was near him, too.

213 Q. Did you see Bristow do anything with Edmund Page—did you see him get anything from him?

A. I couldn't tell. I don't know that.

Q. You didn't see that?

A. No, sir; I was very much excited. I don't remember. I only know what I did.

Sworn and Subscribed to before me this 10th day of June A. D., 1904.

____ ____,
Notary Public.

In the United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, Owners of the Steamship *Hamilton*, for a Limitation of Liability and Other Relief.

Depositions taken this 11th day of June, 1904, at 9.30 A. M., before Francis C. Adler, Esq., Notary Public, pursuant to notice in the above case.

214 Present: Francis S. Laws, Esq., Proctor for Claimant.
H. Alan Dawson and Biddle & Ward, Esqrs., for Respondent.

Mr. Dawson asks if this claim is against the *Hamilton* or the *Saginaw*.

Mr. Laws states that it is a claim against the *Hamilton* simply.

JAMES COOPER, being duly sworn according to law, was examined as follows:

By Mr. LAWS:

Q. Mr. Cooper, where do you live?

A. 1629 North Street, Philadelphia.

Q. And you were the pantryman on board of the Steamship *Saginaw* of the Clyde Line?

A. Yes, sir.

Q. You were the pantryman at the time of the collision between the *Saginaw* and the *Hamilton?*

A. Yes, sir.

Q. How long before that time had you been pantryman?
A. Well, about, on that ship, I was very nearly eight months.
Q. You were on her on the voyage in which she went down on May 5th?
A. Yes, sir; May 5th.
Q. Did you have an assistant cook on the vessel at that time?
A. Yes, sir.
Q. What was his name?
A. Ed. Page.
Q. Was his full name Edmund Page?
A. Yes, sir; we called him Ed Page.
Q. What was his race, a white man or a colored man?
A. Well, his race was a colored man.
Q. He was a colored man?
A. Yes, sir.
215 Q. Just describe his appearance, or what he looked like?
A. He was a thick set fellow, with a little mustache, right around here (indicating), a dark mustache.
Q. About how old would you say he was?
A. I think he must have been thirty some odd years old.
Q. How long had he been on the boat with you?
A. Well, he had been on the boat the whole time that I was there.
Q. Do you know where he lived?
A. I do not know exactly where he lived. He lived somewheres in Norfolk or Portsmouth.
Q. That is in Virginia?
A. Yes, sir.
Q. Do you know whether or not he was on board of the *Saginaw* on the trip in which she was sunk in the collision with the *Hamilton?*
A. Yes, sir; I saw him there myself.
Q. How did you see him on the boat, after the collision or not?
A. A little after.
Q. Where was he then?
A. He was then about amidships, in the galley there.
Q. Was he on duty at the time?
A. Yes, sir.
Q. What was he doing?
A. Well, he was fixing—he was cooking—getting the meal. I was as close to him as I am to you.
Q. Now, did you see the boats put off from the ship—the life boat? Did you see them leave the ships?
A. No; I saw one of them leave the ship. They got out the life boats before I could see them.
Q. Did he go in the life boat as far as you could see?
A. No, sir; he was on duty when I came up and I jumped up and looked and I seen all these life boats were gone except this one.
Q. Did you see him after that?
A. Yes, sir; after that that went on the starboard side of the

ship and went down with two or three men in it. That was
216 the last that I saw him. She swung from the boat.

Q. Was this man Page in that boat at all?

A. No, sir.

Q. Did you see him on the ship after the boat had left?

A. I know when the boat left, I saw Page was there. He was right down by the ship.

Q. How long before the ship actually sank did you see Page on the deck of the ship?

A. Well, about three minutes.

Q. Was the ship sinking at the time you last saw her?

A. Yes, sir, the ship was going on right down, sinking very fast.

Q. Do you know what wages he earned?

A. Well, I do not. I don't know exactly how much he earned, but I think it was about $20.

Cross-examination by Mr. DAWSON:

Q. Where are you employed now?

A. I ain't employed nowhere.

Q. Tell us what crew the *Saginaw* carried on the trip when she got in collision with the *Hamilton?*

A. What crew she carried?

Q. Just mention the crew?

A. Well, she carried a captain and he had his crew.

Q. Who were they, how many men?

A. Well, I don't know exactly how many. I cannot tell exactly how many crew she carried, but he had six men. That was his crew. Then he had his first mate. I don't know how many men he had altogether, but he had six in his crew. The captain and the engineers have on the average about six. The engineer, I think he had six, and the steward, under his control, he had, the stewardess was one, the waiter man was two and myself was three, and the cook was four and he had the fifth.

Q. Who made the fifth?

A. The steward that runs the steward department.

217 Q. Was that all?

A. Yes, sir.

Q. Where did you join the *Saginaw?*

A. Down here at Clyde's wharf.

Q. Philadelphia?

A. Yes, sir.

Q. Where did Page join the *Saginaw?*

A. I don't know where he joined the *Saginaw;* here or in Norfolk.

Q. You have said that he was a heavy, thick set man. About how tall was he?

A. A man a little over five feet; may be five feet and some inches.

Q. How tall are you?

A. I am a little over five feet and two inches.

Q. Was he as tall as you are?

A. Well, I am not sure.

—. What color of eyes had he?

A. A kind of brownish eye.

Q. Any peculiarities about him, any scars or marks on him that you know of?

A. Well, not as I know or that I could discover about him. He was a sound man.

Q. Any peculiarities?

A. No, sir.

Q. Did he work under you?

A. Oh, no, sir.

Q. He was not in your department?

A. He was in the kitchen department and I was in the pantry. I attend to the things after he had cooked them. I received them from him and took them over to the pantry where I kept them warm, and everything I then dished out and passed over to the steward.

Q. Do you know whether Page was married?

A. I don't think he was, no, sir.

Q. What time in the day did this collision occur?

A. Well, it occurred between four and five o'clock in the morning.

Q. Of the fifth of May?

A. Yes, sir, the fifth day of May.

Q. What year?

A. That was in the year of '93.

Q. You mean 1903?

A. Yes, sir.

218 Q. Was it daylight at the time?

—. Well, no. You could just discern. It was between four and five o'clock, and you could just discern.

Q. Was it clear or foggy?

A. Well, it was foggy. It had been very foggy, but it had broke off, just at the time of the collision or thereabouts, I would say.

Q. Where were you when the collision occurred?

A. I was in my room.

Q. In your bunk?

A. Yes, sir.

Q. What did you do?

A. I jumped up and then I looked right there, right at the cut, and after I saw the ship, I jumped, and I heard the *Saginaw* blow very quick and sharp, very quick. I heard her blow very heavy and then *Hamilton* blowed very quick and sharp, and in a little while after that, I heard them strike and I jumped right up and the cut was about three feet from my window, where I was.

Q. What did you do?

A. I jumped out and looked right down to see whether there were any boats to get in, and I saw they got a boat and went down.

Q. Where did you go?

A. I was in the saloon and I went right up and opened the doors. By that time, the passengers were all hollering.

Q. Where did you see this man Page?

A. When I walked up in the galley, he was on duty. He was then on duty. Then I saw him and was right with him.

Q. How long did you stay with him?

A. Well, it had been about three minutes.
Q. What did you say to him?
A. Well, he didn't say anything much to me. I says, "She's gone."
Q. What did he do, if anything?
A. He didn't do anything.
Q. What became of him?
219 A. He wandered around, and the last I saw him, he got confused—everything was confused. They didn't pay much attention and that was the last I saw of him.
Q. You were excited yourself?
A. Yes, sir; I was a little excited.
Q. You didn't pay much attention to anybody else?
A. Yes, sir.
Q. But you didn't notice Page after you left him?
A. Well, I did. Yes, sir; I saw him at last.
Q. On which side of the ship was he when you last saw him, walking about?
A. He was on the left side at that time.
Q. The port side?
A. Yes, sir.
Q. Which side were you on when you saw him? Were you also on that side?
A. I was also on that side.
Q. When you last saw him, you say that was about three minutes before the *Saginaw* went down?
A. Yes, sir.
Q. You don't know where he went after that?
A. He was on the boat.
Q. But you didn't see him after that?
A. No, sir.
Q. How were you saved?
A. Well, I was saved—washed on the side of the ship and I jumped and went down and I held my breath. After she came over, I held to the side of the ship and then I held my breath, the deck washed past me, and at that time the freight washed me up on the ship. They had a pretty large freight of strawberries and other stuff bringing over.
Q. And there were lots of pieces of timber floating around there with you?
A. Yes, sir.
Q. And was your wife saved with you?
A. No, sir; my wife was not on her.
Q. How were you picked up?
A. I was picked up by one of the *Hamilton's* boats. She swung and after the boat was balanced good and I held to her and
220 another one of the men, my shipmates, was out and about being drowned and we got out to him.
Q. You were picked up by the *Hamilton's* boat?
A. Yes, sir.

Q. And were any of the people of the *Saginaw* saved by the *Saginaw's* boats?

A. Oh, yes, sir; pretty much near all of the sailors. They went off first in the boat. All the sailors went off first and took the first boat off and they were all saved except the chief mate. He got drowned.

Q. You have said that there were no lifeboats left when you left the *Saginaw,* when you last saw Page?

A. No, sir.

Q. Couldn't there have been a lifeboat on the other side of the ship, that you would not have seen in your excited state?

A. I didn't see any. I looked at the hooks myself.

Q. Did you look at the hooks on both sides of the ship?

A. Yes, sir; my eyes was flashing on both sides of the ship and all the lifeboats were gone.

Q. Was there light enough for you on the deck, that you could see the length of the ship?

A. Yes, sir; at that time I could see the whole length of her. We had been running through a fog all that night.

Q. Did you know Antonio Arguinchona on the *Saginaw?*

A. Yes, sir.

Q. What was his position?

A. He was a sailor.

Q Do you know N. C. Bristow?

A. Yes, sir.

Q. Who was he?

A. He was an oiler on the ship.

Q. On the *Saginaw?*

A. Yes, sir.

Q. At the time of the collision?

A. Yes, sir.

Sworn and subscribed to before me the 11th day of June, A. D. 1904.

——— ———.

221 NEHEMIAH C. BRISTOW, being duly sworn according to law, was examined as follows:

(Mr. Dawson, Counsel for the Respondent, notes a preliminary objection to the testimony of James Cooper and the present witness, the same as that made to the testimony of Antonio Arguinchona.)

By Mr. LAWS:

Q. What is your business?

A. Second assistant engineer of the *Saginaw.*

Q. You were on the *Saginaw?*

A. Yes, sir.

Q. Where do you live?

A. 1816 S. 6th St., this city.

Q. You were the second assistant engineer of the *Saginaw* at the

time that she was in collision with the steamship *Hamilton* on the 5th of May, 1903?

A. Yes, sir, I was.

Q. Did you know the name of the second cook on that vessel on that trip?

A. Yes, sir.

Q. What was his name?

A. Edward Page, we called him.

Q. Edmund or Edward Page?

A. We always called him Ed. Page.

Q. Will you please describe, in a general way, the appearance of the man?

A. He was a man quite as tall as I am, a little fellow, with a dark mustache.

Q. Was he a white man or a colored man?

A. Colored man.

Q. And what was his age, as far as you could judge?

A. Somewheres in the neighborhood of 31 or 32.

Q. Do you know where he lived?

A. Pinner's Point.

Q. Virginia?

A. Yes, sir.

Q. That is opposite Norfolk?

A. Yes, sir, nearly opposite; just above Portsmouth.

222 Q. How long had he been on the vessel before she was in collision?

A. Well, he came when we came back from Boston. I think it was in November or December.

Q. Of the preceding year of 1902?

A. Yes, sir.

Q. You had known him continuously from that time up to the time of the collision?

A. Yes, sir.

Q. Now, did you see any one putting off the life boats that went from the *Saginaw?*

A. Yes, sir, I assisted both boats.

Q. How many boats went away from the vessel?

A. Two boats.

Q. You assisted with both boats?

A. Yes, sir.

Q. Was this man Page in either boat?

A. No, sir.

Q. Did you go in either boat yourself?

A. Yes, sir.

Q. Which boat did you go in?

A. I went in the port boat, the second boat we got off.

Q. After the *Saginaw* sank, did you see the persons who were on the *Saginaw* mustered in as having been saved?

A. Yes, sir.

Q. Where did you see that?

A. When we got aboard of the *Hamilton*.
Q. Was this man Edmund Page among them?
A. No, sir.
Q. Was there any other vessel in the neighborhood at the time the *Saginaw* sank that could have saved him?
A. No, sir, I did not see any vessel around.
Q. There has been no report of anybody being saved except those on the *Hamilton?*
A. Yes, sir.

By Mr. DAWSON:

Q. That is, you have not heard of any?
A. Yes, sir.

223 By Mr. LAWS:

Q. How long before the vessel sank, did you see Edmund Page on the vessel?
A. Why, directly after the collision, as I was getting off the starboard boat, the second officer, I think he hollered for a knife, and I happened to be in the galley and got a knife from Ed. Page. He gave me a knife to cut the canvas lashings over the top of the boat.
Q. How long was that before the vessel sank?
A. I judge fifteen minutes. I don't think it was over that.
Q. What vessel are you on now?
A. On the *Benefactor* this trip.
Q. And you expect to go to sea when?
A. Why, this evening.

Cross-examination by Mr. DAWSON:

Q. To what line does the *Benefactor* belong?
A. The Clyde Line.
Q. You have described Page as being about your height. How tall are you?
A. He was not a tall man. I am five feet five, I should judge.
Q. You say he was then five feet four?
A. Somewheres in that neighborhood. He was not quite as tall as I am.
Q. How heavy was he?
A. I judge he was, say, 150 pounds.
Q. What do you weigh?
A. I weigh 130 pounds.
Q. Where did Page join the ship, that is, the steamship *Saginaw?*
A. He didn't join her in Norfolk. Yes, sir, they went down on another trip.
Q. You don't know that, except what you were told?
A. He was on the Gulf Stream all the time.
Q. How do you know?
224 A. I know it when we changed. As soon as we got to Norfolk the captain came and the captain fetched his own crew on the *Saginaw*.
Q. How long had you been on the *Saginaw* prior to the collision?

A. About nine months.
Q. Where did you join her?
A. I joined her in Philadelphia.
Q. Were you the second engineer of the *Saginaw* at the time of the collision?
A. Yes, sir.
Q. How do you know that Page lived at Pinner's Point?
A. He used to go up every Sunday evening that we laid there.
Q. He told you that?
A. Yes, sir; to his mother's, that is what he told me.
Q. Well, the last you saw of Page was just after the collision?
A. Just as the collision happened, the second mate hollered for a knife and I had no knife, and in fact, I had no clothes on except my underclothes.
Q. That was the last that you saw of him?
A. That was the last I saw of Page.
Q. How long before she went right down, did you leave her in the port bow?
A. I judge we got as far as 100 feet say.
Q. Give us it in time?
A. No more than a couple of minutes.
Q. About how long before you got to the *Hamilton?*
A. Well, I don't know. We was rowing around quite a little while before we got off, and before we got to the *Hamilton*, the *Saginaw* sank, in a little while before we got on the deck of the *Hamilton.*
Q. How long?
A. I judge fifteen or twenty minutes.
Q. What time did this collision occur?
A. Well, this collision happened, I judge, about twenty minutes before five o'clock.
Q. On the 5th of May?
A. Yes, sir.
225 Q. Was it clear or foggy?
A. Foggy.
Q. How far could you see in the fog?
A. Well, I don't think I could see more than half the length of the ship.
Q. And therefore you didn't see the *Saginaw* when she went down?
A. Why, I could see her when she went down.
Q. You couldn't distinguish people on the deck?
A. Yes, sir.
Q. Were there lots of timber and other wreckage floating around after she went down?
A. Yes, sir; the hatches and other things.
Q. And the survivors held on to these hatches?
A. Yes, sir; they had life preservers on and some were in the rigging.
Q. You saw lots of floating wreckage that they could hold on to?
A. Oh, yes, sir.

Q. You say that you saw no other boats in the vicinity?
A. No, sir.
Q. But you could see only a boat's length away?
A. We were up for an hour on the *Hamilton*.
Q. It was still foggy?
A. It was -till foggy. They had their boats around and picking the people out of the water.
Q. But there might have been other boats in the fog a short distance away, that you could not have seen?
A. Oh, yes; there might have been. We didn't hear any whistle or anything of that kind.
Q. Do you know Antonio Arguinchona?
A. Yes, sir.
Q. He was what?
A. An oiler on the *Saginaw*.
Q. At the time of the collision?
A. Yes, sir.
Q. Did you know James Cooper?
A. Yes, sir.
Q. Who was he?
A. Why, he was a pantryman or waiter. He stood in the pantry and washed dishes and waited on the table.
Q. Where?
A. On the *Saginaw*.
226 Q. At the time of the collision?
A. Yes, sir.
Q. Well, how old did you say Page was?
A. I judge he was about 31 or 32 years old.

By Mr. LAWS:

Q. Mr. Bristow, did I understand you to say that the *Hamilton* cruised around with her boats for sometime after the collision, picking up everybody that was afloat?
A. Yes, sir.
Q. About in that neighborhood?
A. Yes, sir; I don't know how long it was. I know she stayed there quite a lit-le while.
Q. What do you say in a general way?
A. Well, I should say from half an hour to an hour. She might have stayed that long, yes, sir.

By Mr. DAWSON:

Q. What was the condition of the sea at this time; was it smooth or rough?
A. Smooth; if it had not been smooth, I suppose more would have been drowned than there was.

Sworn and Subscribed to before me this 11th day of June, A. D., 1904.

—— ——.

Depositions taken on behalf of Mary Swanson, Administratrix of the Estate of Peter Swanson, deceased, *de bene esse*, pursuant to notice, before Francis C. Adler, Esq., Notary Public, at his office, 722 Bourse Building, Philadelphia, on Monday, April 4th, 1904, at 2 o'clock P. M.

It is agreed that the depositions may be taken stenographically and thereafter reduced to typewriting. Signing, sealing and certification waived.

227 Present: Francis S. Laws, Esq., Attorney for Claimant. Wing, Putnam and Burlingham (by Mr. Mattison) for Respondent.

NEHEMIAH C. BRISTOW, being duly sworn according to law, was examined as follows:

By Mr. LAWS:

Q. Mr. Bristow, where do you reside?
A. 1816 S. Sixth Street, Philadelphia.
Q. Your business is what?
A. Second assistant engineer of Clyde Line Steamers.
Q. Were you on board of the steamer *Saginaw* on the night or the morning of May 5th, 1903, when she was in collision with the steamship *Hamilton?*
A. I was.
Q. And what was your position then?
A. Second Assistant Engineer of the *Saginaw.*
Q. How long had you been on the Saginaw prior to that time, about?
A. I went on her, I think, the 15th day of July previous.
Q. Did you know a man named Peter Swanson, who had been a seaman on that vessel?

Objected to by Mr. Mattison.

A. Yes, sir.
Q. Will you just describe in a general way what the man's appearance was that you knew as Peter Swanson?

Objected to by Mr. Mattison.

A. He was a tall man and his hair was kind of turning
228 gray, grayish eyes, light complected and sandy mustache.
Q. What was his description with respect to build?
A. Slim man; tall and slim man.
Q. Had this man which you knew as Peter Swanson ever been on the vessel before?
A. Yes, sir. He got hurt sometime in March down at Portsmouth by hauling in the boat there and he afterwards—I couldn't say what day—it was in March—I don't remember that—and he was taken to the hospital. There is a hospital at Norfolk, the St. Vincent, I think that is the name of the hospital at Norfolk, for a fractured leg or a broken leg, I don't know which it was.

Q. Were you present when he was hurt?

A. I was. I happened to come on deck and go in the steering gear room that morning there, sitting by a valve or something—I don't just remember—and I heard this rope when it broke. It broke or gave way and struck him in the leg. I saw the man fall and I thought he was killed and I told the Chief. Of course, I don't know how he was injured or anything like that. I saw the man and I went and told the Chief that he was hurt. Mr. Moltte was the Chief Engineer at the time, in the place of our own Chief.

Q. Did you subsequently see the man on the vessel on the trip on which the Saginaw was in collision?

A. Yes, sir.

Q. The same man?

A. The same man.

Q. In what capacity was this man on the boat at the time he was hurt?

A. He came up as a passenger with us.

Q. At the time he was originally hurt?

A. He was a seaman.

Q. On the *Saginaw?*

A. Yes, sir.

Q. Did you or not see him on the trip on which the *Saginaw* was in collision?

A. Yes, sir; I seen him on that trip.

229 Q. Had he entirely recovered from the injury?

A. Well, no, he was walking with a cane and kind of limping a little.

Q. What time did you see him there?

A. I often saw the man there at the supper time. He came up to the supper table. He was sitting as far as across the room to where I was at the table and then after that I had a conversation with him, after supper, probably half-past six o'clock. The last time I talked with him was about half-past eight in the evening. It was between eight and half-past.

Q. What part of the ship was he in at the time?

A. He was standing there, and one of the oilers was standing taking part in this conversation.

Q. What was the oiler's name?

A. This man Lino——

Q. Lino Arginnochona, is that the name?

A. Yes, sir.

Q. Is that the man who is present now?

A. Yes, sir.

Q. He is a Spaniard?

Objected to by Mr. Mattison as leading.

A. Yes, sir.

Q. Do you know in what capacity Swanson was in on board of this ship at the time of the collision?

A. He was a passenger.

Q. Did you have any conversation with him about his berth or anything of that kind?

Objected to by Mr. Mattison.

A. Yes, sir; the man told me how good Captain Tunnell was to him and fetched him up on the boat. He thought he would have to work as a sailor and he would have to eat where the sailors eat, but the Captain fetched him in the saloon and gave him a berth
230 in the saloon. Then, of course, I asked him how he felt and how his leg was getting along and things of that kind.

Q. And you saw him that evening between what time?

A. Between eight and half-past eight.

Q. What did you do?

A. I went to bed, as I had to come on watch at twelve o'clock.

Q. Did you come on watch at twelve o'clock?

A. Yes, sir; I went down in the cabin until about ten minutes of twelve o'clock.

Q. Did you go to any other portion of the engine room when you turned out?

A. Before I went in the engine room, I went back into the saloon to get a glass of water.

Q. Was this man in the saloon or about there at the time or not?

A. No, sir.

Q. Did you also go on deck before you went downstairs?

A. That was on deck. I came in and went in the saloon to get a glass of clean water.

Q. Was the man about anywheres on deck or in the saloon when you came up after that time?

A. No, sir.

Q. At the time of the collision, were you on duty or not?

A. I was not on duty. I came out of the engine room about twenty minutes after four. I was sitting down there talking to the first assistant all of that time.

Q. Was this man anywheres about at that time?

A. No, sir.

Q. If he had been about, could you have seen him?

Objected to by Mr. Mattison.

A. If he had been about, I would have seen him, when I came up on deck.

Q. Now, did you assist in launching any of the life boats?

A. Yes, sir; I assisted in the boat on the starboard side, the
231 first boat, No. 2, I think the boat's number was.

Q. And what kind of passengers were put in that boat?

A. Colored passengers; women passengers.

Q. Was this man in that boat at all?

A. No, sir.

Q. You were right there?

A. I was there and assisted and helped to assist to lower the boat and assisted the women to get in there.

Q. And was or was not this man in there?

A. He was not in that boat.
Q. Did you help to assist in launching any other boat?
A. Yes, sir; I did assist to launch the boat on the port side.
Q. You went off in that boat yourself?
A. I went off in that boat myself.
Q. Was this man in that boat?
A. No, sir.
Q. After the time of the collision, was this man on deck at any time that you saw?
A. I didn't see anything of him whatever.
Q. The last time that you say you saw him was when you left him shortly after eight o'clock?
A. Between eight and half-past eight the night previous to the collision on Monday night or Tuesday morning she sank.
Q. You expect to leave very shortly?
A. To-morrow evening at five o'clock.

Cross-examination by Mr. MATTISON:

Q. Your watch was from what time?
A. Twelve to four.
Q. And you came off at about 4.20?
A. I came out of the engine room at 4.20. I was sitting down there. I lit my pipe and was sitting there smoking.
Q. What time did the collision happen?
232 A. I think it was about 4.40 or 4.45, or something like that in the morning.
Q. Have you given your testimony in this case in New York before?
A. No, sir.
Q. Where were you at the time of the collision, Mr. Bristow?
A. I was in my room, of course. I came in and just lay down in my birth and my oiler who was on watch with me, he had not got in the room.
Q. What did you do directly after you went off watch?
A. After I came out of the engine room?
Q. Yes, sir.
A. I went to my room and I stayed there until I came up.
Q. Did you leave there again until the time of the collision?
A. No, sir; not until the time of the collision.
Q. When did you first see this man Peter Swanson?
A. The boat.
Q. In what connection?
A. He was an oiler on it and I was the engineer.
Q. He was on your boat?
A. He was on our boat *Saginaw;* yes, sir.
Q. Did he ever tell you his name?
A. Peter Swanson. I have heard his name was Swanson.
Q. Did he tell you what his name was?
A. Yes, sir; he told me where he lived on Arch street, just above Front.
Q. Do you know his wife?

A. No, sir.
Q. Did you ever see her?
A. No, sir; I never met the lady.
Q. Do you know whether he remained on the *Saginaw* up to the time he was injured—was he a sailor on the *Saginaw* up to the time he was injured?
A. Yes, sir; he was a sailor up to the time he was injured.
Q. Were you on the ship all that time?
A. Yes, sir.
Q. When was it that he was injured?
233 A. It was in March. I couldn't tell you the date. I know our chief engineer's child was buried and he had to come home from Portsmouth and they sent another engineer down. We left Norfolk on Monday morning and this man was injured on a Monday afternoon.
Q. Where were you?
A. At Portsmouth.
Q. At the dock?
A. We were going in the dock. The rope broke and struck him. It went through the block and struck this man and he was standing up taking in the slack of the line.
Q. You saw him taken from the ship?
A. Yes, sir; I saw him when he was taken from the ship at Norfolk.
Q. You say he came back as a passenger?
A. He came back as a passenger.
Q. What class, do you know?
A. We had only one class of passengers.
Q. And you were at supper with him that night?
—. Yes, sir.
Q. What time did you see him at supper that night?
A. Five o'clock I came into supper, probably five minutes after five. I was sitting at the table as he came in.
Q. What time do you generally have supper on those boats?
A. Five o'clock.
Q. Is it customary for the officers and engineers to eat in the saloon?
A. Yes, sir.
Q. You do not have a saloon of your own?
A. We do not have any mess room on her, only the saloon.
Q. Where was it that you last saw him that night?
A. On deck.
Q. Where on the deck?
A. Just forward of the engine room.
Q. What time was that?
A. Between eight and half past eight. Probably it may have been in the neighborhood of half past eight the last time
234 I was speaking to him.
Q. You did not see him again when you were launching either of those boats?
A. No, sir.

By Mr. LAWS:

Q. The vessel was at sea when you were at supper?
A. We was lying at the dock.
Q. You saw him after the vessel left the dock?
A. We left Norfolk about half past six to seven o'clock and we was between Old Point Comfort and Cape Henry when I turned in.
Q. He was on the boat then?
A. He was on the boat.
Q. Between the time you left Norfolk and the time of the collision in the neighborhood of two hours to an hour and a half elapsed?
A. Anyhow.
Q. Between the time you left Norfolk and the time of the collision, the boat had not stopped at any port?
A. No, sir.
Q. You had been to sea all the time?
A. Yes, sir.

By Mr. MATTISON:

Q. You just testified that he was on the boat when you turned in. How do you know that?
A. I do not see how he could have got off.
Q. Did you see him at the time you turned in?
A. I left him with the oiler.
Q. Where was that, on deck?
A. Yes, sir.
Q. You went on duty again at twenty minutes after twelve o'clock?
A. I go to bed any time before eight. I came on watch at twelve. I went off at four o'clock in the morning and I left him about between eight and half past eight; probably in the neighborhood of half past eight when I went up and went to bed. I left him on deck and I went in my room. That is the last I saw of him.
Q. That was the last time?
A. Yes, sir.
Q. You testified that you went below at twelve o'clock?
A. I came on watch at twelve o'clock.
Q. When did you turn in to go to bed?
A. I went to bed about half past eight and I came on deck again at four o'clock.
Q. But do you mean that he was on the boat when you came off at 4.20?
A. I suppose he was. I don't know how he could get off the boat.
Q. How do you know that he was on the boat?
A. I did not see him after half past eight, but the man was on the boat, because the boat had not made any stops anywheres.

Mr. Mattison moves to strike out the last part as not responsive, beginning "the man was on the boat * * *."

Q. Were you subpœnaed to appear here to-day?

A. I got a notice to come here.
Q. Were you subpœnaed?
A. I just got a notice from Mr. Van Kirk, from the Superintendent of the Clyde Line.
Q. He is the Superintendent of the Clyde Line?
A. Yes, sir.
Q. He told you to come here to-day?
A. Yes, sir.

By Mr. LAWS:

Q. Mr. Bristow, did you see the survivors from the *Saginaw* after they were on the *Hamilton?*

Objected to by Mr. Mattison.

A. Yes, sir.
Q. Was this man Swanson among them?

Objected to by Mr. Mattison.

236 A. No, sir.

By Mr. MATTISON:

Q. What did you do when you first reached the *Hamilton?*
A. I went in the saloon and I talked with—I think it was the Steward.
Q. Was anything done for you there in the way of looking after you at all?
A. Yes, sir.
Q. And did you go to bed?
A. No, sir; they gave me a key to a room to go to bed, if I wished to.

Signature waived.

LINO ARGINNOCHONA, being duly sworn according to law, was examined as follows:

By Mr. LAWS:

Q. What is your nationality?
A. I am supposed to be a Spaniard.
Q. Where do you live?
A. My home is Bilbao, Spain.
Q. And what is your business?
A. Oiler.
Q. On board of what boat?
A. On the steamship *Oneida.*
Q. Were you an oiler on the steamer *Saginaw* in May, 1903?
A. Yes, sir.
Q. Did you know a man named Peter Swanson on that boat?

Objected to by Mr. Mattison.

A. Yes, sir.

Q. Had you known a man of that name before the time of the collision?

A. Yes, sir.

Q. How long about had you known him?

237 A. Well, I knew him I suppose six or seven weeks before the collision, he was a sailor.

Q. On the same boat?

A. On the same boat, yes, sir.

Q. What kind of a looking man was he?

A. He was a tall man, light hair. He was getting gray and he had a little mustache. He did not have a big mustache. That is all I can tell you about him.

Q. What was his build generally?

A. He was a regular built man.

Q. Was he old?

A. About middling.

Q. What was he on the boat at that time—in what capacity was he there when he was on her originally, when you first knew him?

A. He was a sailor.

Q. Do you know whether anything happened to him on any of the previous trips?

A. Yes, sir.

Q. What happened?

A. I don't know whether he broke his leg or what. He got something broke. I don't know whether he broke it or not. He had something the matter with his leg.

Q. Now, did you see him on the ship on the trip that the vessel was in collision?

A. Yes, sir.

Q. What time of the day did you see him?

A. I saw him at supper. It might be say five o'clock in the afternoon and I saw him until nine o'clock that night, the same night we left Norfolk.

Q. Where was he then when you saw him after you had left Norfolk?

A. He was sitting on the bunker hatches. He was there talking to me and the second assistant engineer.

Q. Is that Mr. Bristow?

A. That is Mr. Bristow.

Q. Did you leave before Mr. Bristow or did he leave before you did?

A. He did first.

Q. He left first?

A. He left first.

Q. What time did he leave?

238 A. A little after eight. I don't know what time it was. I know it was a little after eight, because we come off watch at eight o'clock and I met him and I was talking to him. I was talking with him after I got off watch.

Q. Was he entirely cured at that time, on that trip or not?

Objected to by Mr. Mattison.

A. I don't think he was.
Q. What makes you think that he was not?
A. Because he had something under his arm.
Q. Do you mean to help him?
A. Yes, sir.
Q. What were they made of?
A. Wood.
Q. You mean a crutch?
A. A cane. I don't know the name.
Q. And you were talking with him until about how late?
A. Until about nine o'clock.
Q. The vessel was then at sea?
A. At sea.
Q. Then you turned in?
A. I turned in.
Q. Did you have any talk with him?
A. He was talking where he was going to sleep. He told me how the captain treated him right and gave his berth. He treated him as one of the passengers. That is the only thing he told me about it.
Q. When did you turn out again on duty?
A. I turned out quarter to four in the morning.
Q. What part of the vessel did you go then?
A. I was on the port side.
Q. Were you below all of the time, or did you go above?
A. I was going back to the dining room to get a drink of water, and after I had my drink of water I went below on duty.
Q. Was this man Swanson anywheres about at that time?
A. No, sir, I never saw him.
Q. Did you see anybody on board at all at that time?
A. No, sir, outside of the cook. He was in the kitchen.
239 Q. You were up on deck at the time of the collision?
A. Yes, sir.
Q. How soon after the collision did you come up on deck?
A. I was on deck at the time of the collision.
Q. Was the man there at that time?
A. No, sir, I didn't see him.
Q. Did you see him at any time on deck after the collision?
A. No, sir.
Q. If he had been there, would you have seen him?

Objected to by Mr. Mattison.

A. Yes, sir.
Q. Did you go off in one of the boats?
A. Yes, sir.
Q. Which boat?
A. The port side, the second boat that was lowered down.
Q. Was this man in that boat?
A. No, sir.
Q. You expect to go to sea to-night or to-morrow?
A. I expect to go to sea to-morrow afternoon.
Q. Did you see the passengers who were saved after they got on the *Hamilton*—all those that were saved?

A. I can not remember how many there was.
Q. You saw them all?

Objected to by Mr. Mattison.

A. Yes, sir.
Q. Was this man Swanson among any of them?

These questions are objected to by Mr. Mattison.

A. No, sir.

Cross-examination by Mr. MATTISON:

Q. You have been examined before in this case, haven't you?
A. Yes, sir.
240 Q. Your watch was up four o'clock? You went off duty at four o'clock?
A. Yes, sir.
Q. Now, Mr. Seltzer was not in your boat?
A. No, sir; Mr. Seltzer was picked up by the *Hamilton* boat.
Q. He was not in the boat that you were in?
A. No, sir.
Q. Did you go below after the collision?
A. Yes, sir.
Q. How long was it after you came on deck that you got away in this port boat?
A. Well, I think probably about three or four minutes.
Q. You were on the port side of the engine room?
A. Yes, sir.
Q. And did you come right out on that side?
A. Yes, sir.
Q. You stopped to do some things in the engine room first?
A. Yes, sir.
Q. Did you go right to that port boat when you came out on deck?
A. I came over to the port boat and helped to lower it down.
Q. And you went off in that boat?
A. Yes, sir.
Q. You went off from the engine room to that boat?
A. Yes, sir.
Q. How did you know that this man was Peter Swanson?
A. He was a sailor before he was a passenger.
Q. How did you know his name was Peter Swanson?
A. I don't know about the Peter, but I know about the Swanson. I never heard what his first name was.
Q. How did you know his second name was Swanson?
A. Because I heard the fellows call him Swanson. That is the only way I knew.
Q. Did you see this accident that happened to him?
A. I saw him and assisted him after he had been taken up and was taken to the hospital.
Q. Did you see them take him away?
A. Yes, sir.

241 Q. You don't know just where he was injured, do you?
A. No, sir.
Q. How long had he been on the boat as far as you know before this accident?
A. Before he got hurt?
Q. Before he got hurt?
A. I couldn't tell you sure, but I think it was one trip or two, I am not sure.
Q. And when was it that he was hurt?
A. I think it was some time—I don't know what month—I think it was some time in March.
Q. Where were you yourself?
A. I was in the engine room.
Q. Where was the boat?
A. Lying at Portsmouth.
Q. At the dock?
A. Coming out of the dock or going in, I can not say for sure now.
Q. When did you next see this man, after he was injured, this man Swanson?
A. I saw him next when he came on board the same day of the collision. He came aboard the day before she was lost.
Q. The day that you left Norfolk?
A. Yes, sir.
Q. What time did he come on board?
A. I suppose he came on board about half-past four or something like that.
Q. What time was that when you first saw him?
A. I saw him at the same time.
Q. Had you left the deck then?
A. No, sir.
Q. When did you leave the deck?
A. Half-past six.
Q. When was it that you next saw him?
A. A little after eight o'clock.
Q. Where did you see him then?
A. I saw him on deck.
Q. Where was the ship?
A. At sea.
Q. Do you know your whereabouts?
A. Somewheres about Old Point Comfort.
242 Q. Had you come to the Capes yet?
A. No, sir; we was around Cape Henry, or somewheres around there.
Q. Was that the last time you saw him?
A. Yes, sir; nine o'clock; pretty near nine o'clock.
Q. You didn't see him again?
A. No, sir.
Q. Now, you say you saw him at supper?
A. Yes, sir.
Q. Where was he at supper?

A. He was at the table getting his supper.
Q. Where were you?
A. I was getting my supper.
Q. Were you getting your supper in the saloon?
A. There were two tables. I was at one table and he was at the other.
Q. In the saloon for the passengers?
A. Yes, sir.
Q. You go in there for your meals?
A. Yes, sir; I had to go in there to get it.
Q. Do all of the sailors?
A. Not all the men, but the oilers and engineers go in there.
Q. The oilers and engineers go in the same room as the passengers?
A. Yes, sir.
Q. Is that the custom for the Clyde Line boats?
A. What?
Q. For the oilers and engineers and firemen to eat in there?
A. The oilers and engineers. Some of them eat in the mess room. They have a little mess room and the others eat in the main saloon.
Q. Where is the mess room?
A. In our boat they didn't have any.
Q. Where did the firemen eat?
A. In the forecastle.
Q. When did you first know that this claim had been put in for Mrs. Swanson?
A. The first time I knew about it?
Q. Yes, sir.
A. W[illegible] he came to see me (referring to Mr. Laws).
243 Q. Mr. Laws came to see you?
A. Yes, sir.
Q. When was that?
A. That was last Wednesday, I think.
Q. Did you ever see Mr. Laws before that?
A. No, sir; not that I know.
Q. Have you ever seen Mrs. Swanson?
A. No, sir.
Q. Do you know where she lives?
A. No, sir.
Q. How did you happen to come up here to-day?
A. Because they told me to come up here.
Q. Who told you?
A. The lawyer.
Q. Mr. Laws?
A. Yes, sir.
Q. Did you get any other word to come up except Mr. Laws asked you?
A. Only Mr. Van Kirk.
Q. Who is Mr. Van Kirk?
A. The Superintendent of the Clyde Line.
Q. In Philadelphia?
A. Yes, sir.

Q. You didn't have any watch—you weren't on watch before you left Norfolk, were you?
A. Yes, sir; I was on watch at the time we left Norfolk.
Q. That is, you were on from eight to twelve o'clock?
A. I was on watch from four to eight o'clock.
Q. Then you went off?
A. I went off to four o'clock. I went off from eight o'clock at night to four o'clock the next morning.
Q. You were off two watches?
A. Yes, sir. My watch was four hours in and eight hours off.
Q. So that you weren't on watch between eight P. M. and four o'clock A. M.?
A. I went off.
Q. That is, you went off at eight o'clock the night that you left, and you didn't go on until four o'clock the next morning?
A. That is right.
Q. After you went on watch at four o'clock, you testified that you came on deck once?
A. Yes, sir.
244 Q. What was that for?
A. To oil the steering engine.
Q. That was forward?
A. That was forward of the pilot house.
Q. Forward of the mess room?
A. Yes, sir.
Q. And that was the only time you were on deck before the collision?
A. That was the only time; yes, sir.
Q. Did you see anybody besides the cook at that time?
A. No, sir.

By Mr. LAWS:

Q. The *Saginaw* did not have a mess room on board at that time?
A. No, sir; she did not have any.
Q. Some of the other boats do have them?
A. The *Yemasee* had a mess room.
Q. Had the *Saginaw* a mess room?
A. No, sir.
Q. Where do the men eat?
A. The sailor men?
Q. The crew?
A. In the fore-peak.
Q. The oilers and engineers eat up in the saloon with the passengers?
A. Yes, sir.

By Mr. MATTISON:

Q. Now, when you gave your testimony in New York, the events were clearer in your mind then?
A. What about?

Q. The things that happened, that you testified to about at that time?

A. Yes, sir.

(Signature waived.)

245 Depositions of Mary Swanson, J. Homer Trevor and Ambrose Aman, taken on behalf of Mary Swanson, at Philadelphia, December 28th, 1903.

Present: Messrs. Wing, Putnam & Burlingham (Mr. Mattison) for the Petitioner.

Messrs. Hunt, Hill & Betts (Mr. Laws) for Mary Swanson, claimant.

It is stipulated that the depositions may be taken down stenographically, filing, signing and certification waived.

MARY SWANSON, sworn:

By Mr. LAWS:

Q. Where do you live?

A. No. 112 Arch Street, Philadelphia.

Q. What was your husband's name?

A. His name is Peter Swanson.

Q. You were married in what country?

A. In Norway.

Q. How long have you been married?

A. About thirteen years.

Q. That would make you married in 1890? What month and what day?

A. The 27th of February, 1890.

Q. How old was your husband at the time he lost his life?

A. Well, he was born in '61, and it was either the 13th of January or 13th of February, I cannot say which.

Q. You have how many children?

A. Only one.

Q. A boy?

A. Yes, sir, he is twelve years old.

Q. Now what was your husband's trade?

A. He is a shoemaker.

Q. When did you come to this country?

246 A. The first time I think it was in 1887, then I went back again because I was mad, but then I came back in 1900.

Q. Your husband supported you up to the time of his death?

A. Yes, sir.

Q. How much did he make a week?

A. Twelve or thirteen dollars, and sometimes fourteen, according to the business.

Q. Would it average, say $13.00 a week?

A. Oh, yes.

Q. How much of that money did he give you?

A. He gave me all of the money except when he had to buy clothes and shoes, and sometimes he would keep a dollar for himself.

Q. You paid out of that the house rent and supported yourself and boy and your husband, and then he kept a certain amount out from time to time, and one dollar occasionally for spending money?

A. Yes, sir, that's right.

Q. At the time of his death, at what was he working?

A. Why, he was working with the Clyde Line, steamship *Saginaw*, but he broke his leg, and was taken to the Norfolk Hospital, and he was coming home on the day he got drowned.

Q. Did you know that he was coming up?

A. Why, yes, I went to find out, and his name was reported among the missing at the office. But I had sent him down the money to come up with.

Q. Had he written to you before he came up for some money?

A. Yes, he told me to send him some money to come up with.

Q. What did he say he wanted the money for?

A. He said he wanted the money to come up with.

Q. Did you send him any money?

A. I sent him $5.00 and then $10.00 to pay for his crutches, and then $5.00 to come up on; I drew his wages from the Company, Twenty-five dollars a month.

Q. How much did you send him last time?

A. Five Dollars.

247 Q. Did you send it by registered letter?

A. Yes, sir.

Q. Have you got the receipt?

A. Yes, sir, I have the receipts.

Q. The card that you hand me dated May 2d is the one you got from the Post Office when you registered the letter, sending him the $5.00?

A. Yes, sir.

Q. You say you received a letter from him telling you to send the $5.00—have you got that letter?

A. Yes, sir, I have the letter.

Q. I see the letter is in Swedish, can you translate that into English for us?

A. Yes, sir. It reads this way:

"NORFOLK, 4/28/03.

"DEAR WIFE: I will send you this letter and let you know I am "better. I am getting better every day, therefore send me some "money, because I don't know which day I get my discharge from "the hospital, so I can come home. You keep the rest of the money.
"Your husband,

"PETER SWANSON.

"I send love to the boy."

Q. Do you know his signature?

A. Why, yes, sir.

Q. Is that his writing on the card?

A. Yes, sir, that is his writing.
Q. What kind of a man was your husband, a healthy man?
A. Yes, sir, very healthy, never sick a day.
Q. He did other work beside his trade, he worked on this boat?
A. Yes, sir, sometimes he would get tired of his trade, and so would go on a boat.
Q. He had been a sailor before?
A. Oh, yes, sir, he had always been a sailor, and had been to Norfolk before.
248 Q. Did you work while he was living?
A. No, sir, not at all, and he supported the boy the same as me.
Q. Kept you pretty nicely?
A. Kept me all right.
Q. Since his death you have had to work for a living?
A. Yes, I got to work now, to support the boy and myself.
Q. You had a marriage certificate?
A. Yes, sir, he had it, but one time there was a fire where we lived and I lost it and all my clothes. It was burnt up.
Q. You were married by the Priest?
A. In the Lutheran Church.

Cross-examined by Mr. MATTISON:

Q. Mrs. Swanson, how long had your husband been working with the Clyde Line before he broke his leg?
A. One week.
Q. Was this the first time he had ever worked for them?
A. I guess it was.
Q. While he was in the hospital at Norfolk—is that the regular hospital or the company's hospital?
A. I couldn't tell you that.
Q. Well, how long was he in the hospital?
A. From the 2d of March until the 5th of May, when he got drowned.
Q. Was the Clyde Company paying his salary during that time?
A. They paid it to me during all that time.
Q. You say that before that time you had not done any work?
A. No, sir, sometimes I would just for fun do a little work, just for money for my own self.
Q. How about your boy, does he ever work?
A. No, sir; he is going to school; he is not old enough to work.
249 Q. Where did your husband work before he went with the Clyde Line?
A. On Ridge avenue, but I cannot tell just the place or number.
Q. You judge about what he earned from the money he gave you each week?
A. He just gave me his wages.
Q. Did he ever tell you how much he was earning?
A. Why, he gave me the money each week.
Q. You say he was coming back on the *Saginaw*—was he all right then?

A. Yes, as far as I know.
Q. Is your boy going to the public school?
A. Yes, sir.
Q. Was he before the time your husband was drowned?
A. Yes, there is no expense connected with his going to school; they are free.
Q. Are you still living where you were before your husband was drowned?
A. Yes, sir.
Q. Do you know of any reason for your husband giving up his work and going with the Clyde Line?
A. No, sir; only he told me he thought he had better go on the boat for the winter.
Q. Did he tell you how long he expected to stay with the steamship company?
A. No, sir.
Q. Had he been working as a shoemaker up to the time he went with the Clyde Line?
A. Yes, sir.
Q. How long was it after he went with the Clyde Line that he broke his leg?
A. He was only with them one week.
Q. I understand that he gave you twelve or thirteen or fourteen dollars a week, is that correct?
A. Yes, sir.
Q. And you drew all of his pay while he was with the Clyde Line?
A. Yes, sir.
Q. Where was it in Norway that you were married?
A. At a place called Queenstad.
Q. Was this fifteen dollars all together all the money you ever sent him?
A. Yes, sir, that is all I sent him.
250 Q. Mrs. Swanson, what are you doing now?
A. I am working in the Philadelphia National Bank.
Q. Is that a permanent position as far as you know?
A. Yes, as far as I know.
Q. Have you been there ever since this accident happened?
A. —.
Q. How much are you earning a week?
A. Six dollars a week.
Q. That is your only source of income?
A. That is all I have.
Q. You still live in the same house that you did when your husband was living?
A. Yes; I had two rooms when he was living, now I only have one.

Sworn to before me this 28th day of December, 1903.

——— ———.

(Sig.) AUG. T. ASHTON,
Notary Public.

Commission expires January 14, 1905.

Offered in evidence: the registered return receipt dated May 2d, 1903, and signed Peter Swanson, also letter dated April 28th, 1903, and envelope addressed to Mrs. M. Swanson, No. 112 Arch Street, Philadelphia, in which said letter came, marked respectively Exhibits A, B and C.

251 J. HOMER TREVOR, sworn.

By Mr. LAWS:

Q. You live where?
A. In Philadelphia, No. 2212 Fitzwater Street.
Q. What is your business?
A. Travelling salesman.
Q. You were a passenger on board the steamer *Saginaw* on May 5th, 1903, when it sunk?
A. Yes, sir.
Q. How old are you?
A. Fifty-one the 13th of last May.
Q. Mr. Trevor, do you remember coming up on that boat meeting a man on crutches, a sailor, did he ever say what his name was?

Objected to.

Q. How did you come to get in conversation with him?
A. The main table was full of passengers, and it happened that he and I came in last, and we had to sit at a separate table, and I got speaking to him and he told me he had just got out of the hospital at Norfolk and said he broke his leg and was going back home.
Q. And did he mention his name?
A. Yes, he said it was Swanson. I remember he had one crutch and one stick, I think, I am not sure whether he had two crutches.
Q. What kind of a looking man was he?
A. He was a middle-sized man, gray hair, gray mustache, and looked like a man that was used to pretty rough work.
Q. Did you see him after the collision at all?
A. No, sir; not at all.
Q. You were taken aboard the *Hamilton?*
A. Yes, sir.

252 Q. Were all the other passengers that were with you that were saved, taken aboard too? Was this man Swanson taken aboard?
A. No, sir. They took a census and he was not amongst us.

(Objected to.)

AMBROSE AMAN, being duly sworn according to law, deposes and says as follows:

Examined by Mr. LAWS:

Q. Mr. Aman, what is your business?
A. I am a clerk in the employ of the William B. Clyde Company, general agents for the Clyde Steamship Company.

Q. That company was the owner of the steamship *Saginaw* which was lost on May 5, 1903, was it not?

A. I believe so. Yes, sir, they were the owners of it.

Q. Can you say whether or not the Clyde Steamship Company, shortly prior to the collision, had in its employ a man named Peter Swanson?

A. I do not know, sir.

Q. Did you get any advices from your office in Norfolk as to the passengers on board that steamer when she was sunk, who were unaccounted for after the collision?

A. We did.

Q. Can you say, whether or not, among those unaccounted for there was a man named Peter Swanson?

A. The name Peter Swanson appears among those unaccounted for.

Q. Did you personally ever see the man?

A. No, sir, I would not know him at all.

Cross-examined by Mr. MATTISON:

Q. Mr. Aman, who issued this list, as far as you know?
253 This list of which you speak?

A. It was furnished us from our Norfolk office.

Q. Who made it up?

A. I do not know.

Q. You have no personal knowledge as to how the list was made up or from what source it was derived?

A. No, sir, I have not.

Q. So that any knowledge or information you may have in regard to a man named Peter Swanson is derived entirely by report? You never saw the man, I understand?

A. I never saw the man, to my knowledge. I may have seen him, but I do not know him.

Q. And this report was made up at the Company's office in Norfolk?

A. Furnished by our Norfolk (Southern) agent.

Q. And that, as I understand it, is the only information you have in regard to that man?—You personally?

A. That is all. I do not know anything about him.

Reexamined by Mr. LAWS:

Q. The log book of the steamer *Saginaw* was lost when she was sunk?

A. So I believe.

Q. At all events, your company has not that book in its possession?

A. No, sir.

Sworn to before me this 28th day of December, A. D., 1903.

(Signed) AUG. I. ASHTON,
Notary Public.

Commission expires January 14, 1905.

254 Parts of trial depositions offered in evidence by Mr. Woolsey, on behalf of the claimants.

Tunnell, J. S.—Deposition of July 1, 1903. See pp. 115, 116, 119, 120, 127, 135, 136, 149 of this record.

Tunnell, J. S.—Deposition taken in Court November 1, 1904, pp. 181-187 of this record.

Seltzer.—See pp. 171, 172, 175 of this record.

Warrington (Captain tug *Cumberland*, p. 88 of this record.

Molle (2d officer *Hamilton*), pp. 307-309 of this record.

Q. Now, did you see what effect the blow of the *Hamilton* had on the *Saginaw*?

A. Yes.

Q. What was it?

A. She tore a piece of her stern or quarter off.

Q. As you passed by the stern of the *Saginaw*, could you see into the vessel?

A. Yes, I could see some people on deck there.

Q. Could you see right into the vessel?

A. I couldn't see into the hull or underneath the deck; I could see underneath the poop deck.

Q. What did you see underneath the poop deck?

A. I just saw a man trying to get out of the way, or saw a person.

Q. That was in one of the cabins?

A. I couldn't say where it was.

Q. But it was under the poop deck?

A. Yes, sir.

Q. Did you see the cargo coming out?

A. No, sir.

Q. Now, do you say that you heard a second signal of one whistle from the *Saginaw?*

A. Yes, sir.

Q. You were examined before the Inspectors at Philadelphia, were you not?

A. Yes, sir:

255 Q. Now, were not you asked this question: "Q. How did the sound appear to bear from your vessel?"

A. About three.

Q. Did the cargo come out of the stern?

A. Not that I could see.

Q. What became of the part of the stern that was torn away; did that sink?

A. I couldn't say what became of it.

Q. Did you see anybody on that part that was torn away, at all?

A. I seen a person.

Q. One person?

A. Yes, sir.

Q. Was that person saved, do you know?

A. I don't know.

Q. What did it look like?

A. It was a man in his underwear.

Q. Did you notice his looks at all?

A. No; I saw his back only and I couldn't tell.
Q. You don't know whether he was saved or not?
A. No, sir.
Q. Did you notice who the persons were that climbed up the rigging in the ship as she sunk?
A. I didn't notice; I was told it was Capt. Munroe, and the rest I don't know.
Q. Were they all saved, the people that climbed up there?
A. The First Officer went over to the mast; I didn't go that far.
Q. Did they save all the people that climbed up the rigging?
A. I think so.
— that you did not get?
A. No, sir; I asked all my crew if they could see any more, before I left. We pulled around several times.
Q. What distance did you have to go to from your ship to the *Saginaw?*
A. About a quarter of a mile, I suppose.

(By Mr. BETTS:)

Q. The captain of the *Saginaw* was saved, wasn't he?
A. Yes, sir.
Q. Was the chief mate saved?
A. From what I heard, he went down with the ship.
Q. He wasn't on board your boat anyhow?
A. No, sir, he didn't come with me.
256 Q. Didn't come on the *Hamilton?*
A. No.
Q. Did the steward come on the *Hamilton?*
A. I don't know.
Q. There was no other boat around there at the time, except your boats and the *Saginaw's* boats?
A. No, not that I know of.
Q. There was no other vessel there that would have rescued any of the passengers and crew besides yours?
A. Not that I know of.
Q. You would have seen it if it had been there?
A. Certainly.

(By Mr. WARD:)

Q. When you went from your boat to the?

JOSEPH LAWSON, having been first duly sworn, testifies as follows:

Examined by Mr. BETTS:

Q. You have already been examined at Norfolk by Mr. Woodworth, were you not, on or about June 28th, 1904?
A. Yes, sir.
Q. You are the administrator of Edwin Page, deceased, are you not?
A. Yes, sir.

Q. Will you tell me who Page's mother married after Page's father died?

A. His father I never seen; she was married during the war to Page's father and they lived together some years after the war and he died. Then she married a man by the name of Nelson Stokes and he got up at West Point in a ship called the *West Point,* and about forty odd men got burned up there. That is some years ago, so that left her a widow and she has not been married since, so she goes by his name

Q. Can you tell me what Edwin Page did on the steamer *Saginaw?*

A. He was first cook.

257 Q. Did he do anything else on the ship besides cook?

A. No—well, he helped the steward at times in some of his business.

Q. Did you ever see him do anything else on the ship besides cook?

A. Yes.

Q. What did he do?

A. Cleaning fish and different things really outside of his business, and he told me the steward paid him extra for that.

Q. Do you know what he received for his regular warges on the ship?

A. Yes, sir.

Q. How much was that?

A. $20 a month.

Q. Do you know what he received for helping the steward besides that?

A. I don't know, except what he told me. He told me that he made extra tips, the steward would give him between $10 and $12 a month extra, which made his wages $32 or $33 a month some months.

Q. Do you remember his age?

A. I can't say I do.

Q. Who supported Page's mother, Mrs. Stokes?

A. Himself.

Q. Did anybody else live with them besides Page?

A. No, sir; she had two daughters, but one was in New York and she sent her something now and then, but she wasn't her regular support and the other one was my wife. She died eight or nine years ago.

Cross-examined by Mr. PUTNAM:

Q. How old is the mother of Page?

A. That is too hard for me. She is pretty old.

Q. She is quite an old lady, isn't she?

A. Yes, sir.

Q. She is over 70?

A. Well, she is somewhere close up to 70 or 60, somewhere along in that neighborhood, I am satisfied.

Q. Didn't you say she married at the time of the Civil War?

A. Yes, sir.

258 Q. How many children did she have?

A. That is too much for me.

Q. You say she had two daughters?

A. Yes, sir, she had two daughters; I married the oldest daughter.

Q. Does she live with you?

A. No, sir; she doesn't live only as far as from here across the street from me.

Q. You contribute somewhat to her support, do you?

A. Yes, sir.

Q. And the other daughter in New York sends her money?

A. Now and then. We haven't heard from her now for some time.

Q. She is living comfortably?

A. Well, she is making out to live, but nothing extra.

By the COMMISSIONER:

Q. Does she live alone?

A. Yes, she lives by herself.

Q. What sort of a house has she got?

A. She rents a house from the land agent, she rents a small cottage.

Q. Does she do any work herself?

A. No, sir; she is past able to do any work; nobody would be satisfied with her work.

Q. She takes care of her housework?

A. Yes, sir.

Q. Cooking?

A. She has a little grandchild that stays with her all the time. I gave it to her at the time of my wife's death. If anything happens to her, she lets me know.

Q. When you testified before you said that her grandson lived with her and he is about 25 years old.

A. That is Wallace Lawson, my son.

Q. What is his work?

A. He is working on the dock. He don't stay with her any more.

Q. What length of time did he live with her?

259 A. He was living with her up until about a year ago, not quite a year ago.

Q. Is he married now?

A. No, sir, he has moved his work, he had to get closer to his work. At the time I gave my testimony he was living with her.

Claim of Mary Swanson, as Administrator of Peter Swanson, Deceased.

JOSEPH LAWSON, being duly sworn as a witness on behalf of the claim of Mary Swanson, as administrator, testifies as follows:

Examined by Mr. BETTS:

Q. You were acquainted with a man named Swanson, who used to work on the Clyde Line?

A. He was a sailor. I can't say that I was very well acquainted with him; I know him just the same as I know you, standing by. I never did know his right name. I was on the ship when the rope struck him the day that he got hurt, and I was there the day he come back going home.

Q. How did he come back when he went home?

A. When he came from the hospital, I mean.

Q. He came from the hospital?

A. The ambulance brought him down in front of the gangway and took him out. He went up on deck and I spoke to him and he seemed to be in very good cheer that day. He said he was getting all right again.

Q. How did he walk?

A. He had a stick and it seems to me a crutch.

Q. How large a man was he?

A. I don't see a man here exactly built like him.

Q. Was he a small or a large man?

A. He was a pretty good-sized man, pretty bulky and tall, too, but he had fallen away a good deal.

260 Q. About how old a man was he?

A. He looked to be about 45 years old, somewhere in the neighborhood of that.

Q. Did you know how he was hurt; what happened?

A. I know that I ran out of the way of the block; I was standing looking right at him. I thought it was coming down on me. I was standing by the forward house, it had battens around it; it was hooked in the bolt and the bolt pulled out.

Q. What day was it that you saw him going up the gangway of the Saginaw with his crutch and cane?

A. I saw him the same day that the ship made her last trip.

Q. Was this at Pinner's Point?

A. No, sir; it was at Norfolk; it was the last dock she laid at before going to Philadelphia.

Q. Was Swanson a white man?

A. Yes, sir, he was a white man.

Q. Was he a native or a foreigner?

A. He was a foreigner. I couldn't understand his language.

Cross-examined by Mr. PUTNAM:

Q. How long before this sailing of the *Saginaw* was it that Swanson was hurt?

A. As near as I could tell, it was about two months. He stayed at the hospital in the neighborhood of two months.

Q. You saw him when he was taken to the hospital, and also when he was taken back?

A. Yes, sir, I saw him when he was hurt.

Q. What part of his body was hurt?

A. They were heaving ahead on the hawser—the snatch block they had around the—and they were heaving away and the ring that was in the hatch flew out. They had to turn the snatch block loose. It struck him——

Q. Did it break his leg?

A. I couldn't say it did. It struck him at the knees; it
261 was swelled up into a knot bigger than your fist. I looked at him. When he fell his head struck a bitt, and it kind of cracked his skin.

Q. You never saw him between the time he was hurt and the time he returned to the ship again?

A. No, sir, I didn't.

Q. Was he in the hospital at Norfolk?

A. Yes, sir, at St. Vincent's Hospital.

Q. Were you on the ship after she left at Pinner's Point and came over to Norfolk?

A. Yes, sir, we always come across on her.

Q. What time was it that the ship left Pinner's Point and came across?

A. You must leave Portsmouth——

Q. I understand the place that you saw Mary Hawley was at Pinner's Point?

A. No, sir; Norfolk; that was the dock at Norfolk. That was the last point she left. She goes from Pinner's Point to Portsmouth, and then crosses over the river to Norfolk. That is the last dock she sails from.

Q. Mary Hawley came on board at Norfolk, did she?

A. She came on board at Norfolk, yes.

Q. You had passengers that lived at Pinner's Point come over to Norfolk?

A. They go by electric cars and then they go across the ferry to Norfolk. I have never known passengers—I have known them to come on there——

Q. How long had you known this Swanson?

A. I have seen him backwards and forwards on the ship about a month or two; I couldn't say exactly how long he had been on her. He was an old sailor on her; he had been on her for some time, because I had been talking with him. I lived at Pinner's Point, and when she got the last freight out I always took the ship, as that saves fare. I used to see him——

262 Q. Do you know the name of any other sailor besides Swanson?

A. I can't say I do. I knowed the engineer, but I wasn't personally acquainted with him. I never knew his name, because I couldn't talk his language, but I heard them talk with one another.

Claims of Albert L. Joseph and Maggie E. Goslee, as Executors of the Estate of Edward S. Goslee, deceased;
Claim of Mary Anderson, as Administratrix of the Estate of Sarah Elam.
Claim of Sally T. Morris, as Administratrix of the Estate of William Morris, deceased.

JOSEPH LAWSON, having been duly sworn as a witness in behalf of the above mentioned Claims, testifies as follows:

Examined by Mr. LONG:

Q. Did you know Mr. Goslee, who was employed on the Clyde steamship *Saginaw?*
A. Yes, sir.
Q. Do you know what his position was there?
A. Yes.
Q. What was it?
A. He was First Officer.
Q. Was he First Officer on this steamship on or about the third of May, 1903?
A. Yes, sir; I talked with him.
Q. On that day?
A. Yes, sir, on that day.
Q. Where were you at the time and where was he?
A. We were standing at the gangway.

It is stated by counsel for the Old Dominion Steamship Company that the presence of Goslee, Chief Officer of the steamer, is proven by several witnesses in the case and will not be disputed.

263 Q. Did you know Sarah Elam, the stewardess?

A. I didn't know her full name but I always knew her by the name of Sarah. She always went by that name.

Q. Did you know her to be the stewardess of the steamship *Saginaw?*

A. Yes, sir, I did; she seemed to be very busy making the people comfortable.

Q. When did you last see Sarah Elam?

A. I have seen her standing on deck amongst the passengers. I think she was—it looks to me that she was giving some money or giving somebody some tickets or something or other just before we pulled up the gangway at Norfolk.

Q. Did you ever see her either dead or alive after that time?

A. I seen her dead. I went up when the New York steamer brought her body there.

Q. What was the name of that steamer?

A. The *Hamilton.*

Q. Is that after this collision?
A. Yes, sir.
Q. You say that you saw her body taken from the *Hamilton?*
A. Yes, sir; I helped to bring it down stairs.
Q. Now, in regard to the Morris claim; did you know the steward of this vessel?
A. Oh, yes.
Q. Did you know his name?
A. I never knew anything but William. I always called him William.
Q. Did you see him on the *Saginaw* when she left Norfolk on the 4th of May?
A. Yes, sir; he had just gone aboard with a hamper of fish that the man brought down on one of these little top wagons, some fish and vegetables and he carried the fish up himself; he throwed the hamper over the rail and told me to go out to the waggoner, the man driving the wagon.
Q. Was that at the time of the departure of the ship?
264 A. Near about when she was ready to leave; she had blowed her first whistle.
Q. Did you see him leave the *Saginaw* after that?
A. No, sir; he went away on her.

Cross-examined by Mr. PUTNAM:

Q. This man that you knew as William was a colored man?
A. Yes, sir.
Q. When was it that you went up to New York and brought the body down?
A. I didn't go to New York. They brought her down on a New York steamer.
Q. How long was that after the 5th of May?
A. It was the next day; the *Saginaw* had left about half past five o'clock the day before that and the next day along about, I suppose, it was between 11, 12 and 1 o'clock, it was at that time I saw everybody running around the office and I was down putting some freight on the dock, I was there, too. They said, "Don't you know the New York steamer has run the *Saginaw* down?" I asked the Chief Stevedore what was the matter.
Q. Were there any other bodies there besides hers?
A. No, sir; I didn't see any other dead bodies.
Q. She was colored, was she?
A. Yes, sir, she was a colored woman.
Q. About how old a woman was she?
A. She was a very large woman, a woman looking to weigh 220 or 225 pounds.
Q. How old was she; would you say she was 40 years old?
A. I suspect she was every bit of 40.

265 JOHN L. MORRIS, being duly sworn as a witness in behalf of the claim of Elam, testifies as follows:

Examined by Mr. LONG:

Q. Where do you live?
A. I live at 527 Church street, Norfolk.
Q. What is your business?
A. I am in the undertaking business.
Q. Do you remember attending the dead body of a woman by the name of Sarah Elam?
A. Yes, sir.
Q. Will you tell me as briefly as possible the circumstances?
A. Well, sir, the only thing that I can relate in regard to the matter is that I was called as the undertaker to receive the dead body from one of the Old Dominion Steamship Company's boats, I don't know what one, which I did.
Q. Do you know who called you?
A. I was called by—I don't know, I think, though, I was called by the Coroner; I am not really sure about that.
Q. In consequence of that call, what did you do?
A. I responded.
Q. Where did you go?
A. I sent one of my men and they went down to the boat and they received the body and the Coroner held the inquest right in the street, in the wagon.
Q. In what street was that?
A. Water street.
Q. Was the body brought to your place of business?
A. It was, yes.
Q. And what did you do?
A. I embalmed the body and prepared it for shipment.
Q. Was this the body of a white woman or of a colored woman?
A. It was the body of a colored woman.
Q. Can you give us a general description of it?

A. She was a very stout woman, about 5 feet 6 inches in
266 height, I reckon, and I reckon she would weigh about 225 pounds, something near that.

Q. What was done with the body after it was embalmed by you?
A. Her daughter came down the next day and made arrangements, made arrangements with the Old Dominion Steamship Company for some money and when the body was shipped, it was shipped I think on the Old Dominion Steamship Line to Richmond, Virginia, for interment.
Q. Do you know the name of this daughter?
A. Yes, sir.
Q. What is the name?
A. Mary Anderson.

By the COMMISSIONER:

Q. How old a woman should you say the deceased was?
A. Well, really, she looked like she was 45 or 50 years old, something like that.

Q. Did she seem to be in good health, for a healthy body?
A. Yes, sir; she looked very healthy.

By Mr. LONG:

Q. I hand you a paper which appears to be a bill issued by your company and ask you to tell me what that is?
A. This is a bill for the burial of this party who died. I haven't got her name on here, Sarah Elam to her daughter, Mary Anderson.
Q. The bill was presented to Mary Anderson, was it?
A. Yes, sir, it was.
Q. What is the amount of that?
A. $83.50.
Q. Can you tell me what part of the bill, if any part of it, was paid by Mary Anderson?
A. $33.50.
Q. Who paid the balance?
A. The Clyde S. S. Co.

267 Mr. LONG: I offer the bill in evidence.

It is received in evidence and marked Anderson's Exhibit No. 1 of this date.

Q. Did you have any other charges in connection with the burial of this body of Sarah Elam?
A. No, sir.
Q. Do you know the name of the steamer from which the body was taken?
A. No, sir, I don't remember the name of the steamer. I think it was the *Hamilton*, but I am not sure about that.
Q. Do you remember who owned the steamer?
A. No, sir; they told me it was one of the steamers of the Old Dominion Steamship Company.

Cross-examined by Mr. PUTNAM:

Q. Have you any entry in your book of the name of this dead body?
A. Yes, sir.
Q. What is it entered on the book?
A. The entry on the book is Sarah Ely; the death certificate will show. I think it is Ely on the book.
Q. Why wasn't it put on the bill the name of the person?
A. Because I made the bill out in the name of the party paying it. Dead bodies I keep on another book for reference, dates, etc.
Q. You made a return to the Health Department of Norfolk of this?
A. Yes, sir.
Q. And gave the name?
A. Yes, sir, and they can be called by telephone and that can be ascertained in 15 or 20 minutes right now.
Q. You remember it was either Sarah Ely or Elam, but you don't remember how it was spelt?
A. Yes, sir; I think I put it down Ely, though.

268 *Claim of Sally T. Morris.*

SALLY T. MORRIS, having been first duly sworn as a witness in her own behalf, testified as follows:

Examined by Mr. LONG:

Q. Where do you reside?
A. 2415 East Main Street, Richmond, Virginia.
Q. Are you the person who is making the claim for damages in this proceeding?
A. I am, as wife of William Morris.
Q. You have taken out letters of administration on the estate of William Morris?
A. I have.
Q. And this paper is the one which you received from the Clerk of the Chancery Court at Richmond?
A. Yes, sir, that is the one.

Mr. LONG: I offer that in evidence, the certificate being dated March 27th, 1905.

It is received in evidence and marked Morris Exhibit No. 1 of this date.

Q. When did you last see your husband?
A. On the 3rd of May, 1903. It was Sunday morning.
Q. Where was he at the time?
A. He was home.
Q. In Richmond?
A. Yes, sir, in Richmond.
Q. You saw him when he left his home, did you not?
A. Yes, sir. I saw him when he left home; I saw him when he went off down for the boat.
Q. To what boat was he going?
A. To the *Saginaw*.
Q. Have you ever seen him since that time?
A. No, sir, I have never seen him since.
Q. How long had you been married to William Morris?
A. We were married a year and ten months.
269 Q. Is this the certificate of your marriage?
A. Yes, sir, that is the certificate of the marriage.

Mr. LONG: I produce a certificate showing the record of the Hustings Court of the City of Richmond of a marriage by the Rev. Evans Paine between William Morris and Sally Taliaferro on the 6th day of July, 1901.

Q. What age was your husband?
A. 40; he would have been 41 his next birthday.
Q. When would his next birthday have occurred?
A. In September, 1903, he would have been 41 years old.
Q. What was the condition of the health of your husband during the year prior to May, 1903?

A. He was healthy so far as I know. He didn't know anything else but that.

Q. Did he lose any time from his work?

A. Not a day, to my knowledge.

Q. How large a man was your husband so far as his height was concerned?

A. He was very stout, weighing about 202 pounds.

Q. He was a light colored man?

A. Yes, sir, light complexion.

Q. What was his occupation?

A. Steward.

Q. How long had he been in the employ of the Clyde Line?

A. Two years and a half, I guess.

Q. What rate of wages did he receive per month?

A. Well, that is impossible for me to tell, because he gave me $50 each and every month and I wasn't a woman to ask him about his wages. He asked me when he first married me would I be satisfied with $50 a month. The first of the month he was paid off and he used to give me that $50. I never asked him how much more he had and I really can't tell; I don't know what his wages was. I know what he gave me.

270 Q. How long did he give you $50 a month?

A. From the time he married me until the time of his death. It was about three or four days over. This happened on the 5th and his time in Philadelphia was to pay on the other side and he asked me to wait until he got to the other side and he would send me a registered letter. I said yes. He said, "I will send a letter over if you want to." I said no——

Q. What did you actually receive?

A. I received $50 from him every month, after his death $68 and some cents.

Q. That came from the Clyde Line?

A. Yes, as his dues. I sent for it as I really needed it. This clerk down there came and paid me, the clerk of the Clyde Line. That was his wages.

Q. What were the habits of your husband so far as sobriety and industry were concerned?

A. He was sober and industrious as far as I know. I never knew him to drink anything.

Q. You say he was industrious?

A. Yes, sir.

Q. Was he the chief steward on the *Saginaw?*

A. Yes, sir, he was chief steward of the *Saginaw.*

Q. Was there ever any month in the two years and ten months that you were married that you did not receive at least $50 a month from him?

A. Not a month; just as regularly as the month came he would pay me that $50 saying that it was mine.

Q. Do you know whether or not he had saved up any money?

A. That is impossible for me to tell. He kept all of his clothes and everything in that trunk and said if any accident occurred I

would never want for anything, that I would be fixed all right. When he gave me the $50 I never asked him what else he had. I wasn't a woman to ask him about how much he had, and whether he had a thousand dollars or a million dollars I didn't know. All his clothes was on board there.

271 Q. Were you ever in your husband's room on the *Saginaw?*

A. Well, certainly, occasionally I was. In Richmond, do you mean?

Q. Where was his room on the *Saginaw* located?

A. In aft, wasn't it? I don't know but very little about steamers.

Q. As a matter of fact, he was aiding you in running a business in Richmond, wasn't he, at the time of the accident?

A. He was, yes, sir.

Q. That business was what?

A. The restaurant business.

Q. Now, Mrs. Morris, in the one year and ten months during which you were married to William Morris did he receive any injury of any kind that you know of?

A. No, sir.

Q. Did he undergo any severe spell of sickness during that time?

A. No, sir; he never had an ache, to my knowledge.

Q. And his general health, how was it?

A. He was a healthy man.

Cross-examined by Mr. PUTNAM:

Q. How long were you engaged in this restaurant business?

A. Well, I had been engaged in that about three or four months.

Q. That is before you were married?

A. No, sir, I had never been in there before. I lived in one house twenty-seven years and I moved across the street a little after I was married. I moved with the intention of opening the business with him. He was my only support, I had neither father nor mother or anyone.

Q. When did you start your restaurant?

A. I started it just about three months after I was married.

Q. That would be, then, some time about October, 1901—you were married in July?

A. Yes, sir.

272 Q. Was that at East Main Street?

A. Right across, diagonally in the same neighborhood.

Q. Whose name was the business in, in your name?

A. It was in my name; he left it all to me. He wasn't a man to mess with anything or interrupt with anything.

Q. How much of a restaurant is it,—you had cooks and waiters and all employed?

A. No, my expenses, I have to pay $15 a month there for the house.

Q. That is the rent?

A. That is the rent. I take no lodgers. Then I have meals

served. I had just entered there and he was coming ashore there to help me along with it.

Q. Did you do all the work yourself or did you hire somebody?

A. I had to hire somebody.

Q. You hired a cook: did you hire any waiters or servants?

A. No; I had to hire a cook to help me.

Q. You still carry that on after his death?

A. Yes, sir, I had to do something; I had to live and work for my living; I had nothing else to depend on. I had lived in the house and leased it for two years with the privilege of three years. I am there now, and my work is still going on, and they need me right there now.

Q. Did you- husband, so far as you know, have any money in any savings bank?

A. Not to my knowledge, no. If anything happened he said I wouldn't want for anything, but I didn't know what he had on that boat. If he had saved up anything to give me or invested it I didn't know anything about it. He didn't tell me of that; he only gave me that $50 every month.

Q. You haven's married again since his death have you?

A. No, sir.

By Mr. LONG:

Q. Who supplied the money for you to start this business?

273 A. Well, I had saved it up through his earnings.

Q. Mr. Morris, prior to his marriage to you, lived in Philadelphia, did he not?

A. Yes, sir, he lived in Philadelphia. I didn't know anything of him until he came there.

Q. Have you made any effort to ascertain whether or not there is any money in any bank in Philadelphia in his name?

A. No, I haven't.

Q. So you cannot state whether or not there is any such money?

A. No, sir, I can't say.

SUSAN JONES, having been first duly sworn as a witness in behalf of the above named claim, testifies as follows:

Examined by Mr. LONG:

Q. Mrs. Jones, where do you reside?

A. In Richmond, Virginia, 912 State street.

Q. Did you know William Morris, who was the steward on the steamship *Saginaw*, belonging to the Clyde Steamship Company?

A. I have known him for two years.

Q. Did you know him to be employed on this steamer?

A. Yes, sir, I know that he was employed on this steamer.

Q. What sort of a man was he so far as his physical appearance was concerned?

A. He was a very dignified, nice man.

Q. Was he a large man or a small man?

A. He was a man I guess weighing 200 pounds. He was a healthy looking man.

Q. How often did you see him during the two years that you knew him?

A. Well, sometimes I would see him about twice or three times a month. I used to go down to the boat to get some washing.

274 Q. As a matter of fact this boat used to come to Richmond about how many times a month?

A. I guess it was about four times a month. Sometimes the boat didn't get in on her regular trip.

Q. What did it average?

A. About three or four times a month.

Q. You say you went down to the boat to get some washing; did you do the washing for the steamer?

A. Not for the steamer; I did the washing for the different men on the steamer, for the crew.

Q. Do you know whether or not during the two years that you knew Mr. Morris he ever had any serious illness?

A. Not that I know of.

Q. Or any serious physical injury?

A. I never knew him to be sick all the time I knew him.

Q. He was a generally healthy man?

A. Yes, sir.

Q. Do you know whether or not he lost any time from his work during the two years that you knew him?

A. No, sir; during the two years I knew him he didn't lose any time. He got married on the Saturday night and went to work Sunday morning.

Q. Did you know anything about him having a business in Richmond, a restaurant business?

A. Yes, sir.

Q. Where is that restaurant business located?

A. It was on Main street; I think it was between 24th and 25th street.

Q. How long had that business been running before Mr. Morris died?

A. I couldn't exactly tell you how long it had been running. I went by there——

Q. Was it six months, four months, a year, or how long?

A. I don't know how long; I wouldn't dare say. It might

275 have been six months and it might have been twelve months. I disremember how long it had been.

Q. Well, was it at least as much as six months?

A. Yes, sir, it was.

Q. What do you know about Mr. Morris' habits as to his being sober and being industrious—was he or not sober?

A. He seemed to be a very sober man. I never saw him any different.

Q. Was he or not industrious?

A. He was industrious, sure. He was a good provider.

Q. Do you know anything about his age?

A. No, sir, I don't know what his age was.
Q. When did you last see him?
A. When I last saw him it was the Saturday night before this accident.
Q. Where was he at that time?
A. He was aboard the ship at time ready to go away, that is, I mean it was Saturday night ten days before the accident.
Q. You haven't seen him since, have you?
A. No, sir, I haven't seen him since.

Cross-examined by Mr. PUTNAM:

Q. Were you related to William Morris?
A. No, sir, not at all.
Q. Or to his wife?
A. No, sir.
Q. Did you ever go to the restaurant that she has on East Main street?
A. I have been in front of the door, or to crack a joke with her in passing.
Q. You met Mr. Morris when first you had to go down to the boat?
A. Yes.
Q. You went there usually every time she was in Richmond?
A. Pretty near every time I was there, yes, sir.

Claim of Mary Anderson, administrator of Sarah Elam.

276 SUSAN JONES, being duly sworn as a witness on behalf of said Mary Anderson, testifies as follows:

Examined by Mr. LONG:

Q. Mrs. Jones, you have already testified here in regard to the claim of William Morris. I want to ask you some questions now concerning the claim of Mary Anderson, the administratrix of Sarah Elam: Did you know Sarah Elam?
A. Yes; I have known her over twenty-five years.
Q. Do you know what her occupation was?
A. She was stewardess aboard the ship; she used to run on the Old Dominion ship.
Q. Where was she employed in May, 1903?
A. She was employed in the Clyde Line, on the steamship *Saginaw*.
Q. What position did she hold there?
A. She was stewardess on the ship.
Q. When did you last see Sarah Elam?
A. That was ten days before.
Q. Do you mean at the same time that you testified you saw Mr. Morris?
A. Yes, sir.
Q. Where was she at that time?
A. She was at my house.
Q. Do you know what age Sarah Elam was?

A. I think Sarah told me she was about 53 or would be 53 at her next birthday.

Q. How long was that before the accident?

A. That was the same year.

Q. Then in 1903 she was either 52 or 53 years of age?

A. Yes, sir.

Q. Do you know what wages she made a month?

A. No, sir, I don't know that.

Q. Do you know whether or not she worked steadily at her employment?

A. I never knowed of her missing a week, or two weeks by sickness since I knew her.

277 Q. Have you known her to miss any time for any other reason?

A. No, sir.

Q. How much time has she missed so far as you know in the last five years, that is, the five years preceding the accident?

A. I think it was two weeks, so far as I know. She came to me to take her place on the boat.

Q. When was this time to which you refer,—ten days before the accident?

A. Yes, sir, ten days before the accident.

Q. What was her reason for coming after you,—was she sick?

A. No, sir; she said she had some business to attend to and she wanted me to take her place and the day she wanted me to take her place I was sick in bed.

Q. Do you know what was the character of the business?

A. She said that she was trying—she wanted me to look around she wanted to buy a little home.

Q. You saw Sarah Elam every time the *Saginaw* was in Richmond, did you not?

A. Yes, sir.

Q. The same as you have testified that you saw William Morris?

A. Yes, sir.

Q. What can you say about her general health?

A. She was a healthy woman; she was in good health.

Q. Will you describe just what sort of a woman she was so far as her body was concerned?

A. She was an immense large woman; I guess she weighed over 200 pounds. She was healthy. I guess she was over 5 feet tall; she looked to be.

Q. What were her habits, so far as being sober and industrious?

A. She was an industrious and sober woman. I never saw anything else.

Q. Do you know whether she had saved any money?

A. The last time that she was at my house we was talking over the matter of trying to get this little place and I told her that

278 the lady said she wanted $500 down cash for the place. Then she said to me to ask the lady if she would take $250 down in cash, saying she hadn't saved much more than $400 and didn't want to pay it all out at once.

Q. Do you know of any other savings of Sarah Elam?
A. No, sir. She spoke about some insurance that she had in Philadelphia.
Q. Did you see Sarah Elam after this collision either dead or alive?
A. I saw her dead.
Q. Where was she at the time?
A. When I saw her she was at her daughter's, laid out. The undertaker brought her to her daughter's.
Q. Were you at her funeral?
A. Yes, sir.
Q. She was buried in Richmond, was she not?
A. Yes, sir, she was buried in Richmond.
Q. Was she able to do her work clear up to the time of her death?
A. Yes, sir.
Q. Did you know her father and mother?
A. No, sir, I didn't know her father.

Cross-examined by Mr. PUTNAM:

Q. How long do you say you had known her?
A. I knew her over twenty-five years.
Q. Was she always employed as steward or stewardess upon some ship?
A. No, sir.
Q. When you first knew her what was she doing?
A. She was cooking in New York somewhere.
Q. When did she first go as a stewardess?
A. I think she was on the Old Dominion Line here.
Q. Do you remember how long ago that was?
A. I couldn't exactly tell you how long it was, but I know she was in the Line five or six years with me. I was in the Line.
Q. Were you both together on the same vessel?
A. No, sir, not on the same boat.
Q. What boat was she on when you first knew her?
A. I recommended her to the *Wyanoke*.
279 Q. Were you on that boat at all?
A. I was on the steamship *Old Dominion*.
Q. These two boats ran together, did they?
A. Yes, sir, these two boats ran together.
Q. How long were you on the *Old Dominion?*
A. I was on the *Old Dominion*—well, I guess from fifteen to sixteen years in the Line.
Q. On that particular ship?
A. I was on that boat about twelve years, I guess.
Q. How long was it that she was in the employ of the *Old Dominion*, either on the *Wyanoke* or any other ship?
A. I couldn't tell you exactly how many years now.
Q. Did you leave the Old Dominion Line first, or did she?
A. She left first.
Q. And then did she go to some place on shore or did she go into the Clyde Line?

A. Right into the Clyde Line, because I recommended her.
Q. Did she go to the *Saginaw?*
A. No, sir, it wasn't the *Saginaw.*
Q. What ship did she go on first?
A. I think she went on the *Gulf Stream.*
Q. You never were in the Clyde Line yourself?
A. Yes, sir, I was in the Clyde Line.
Q. What ship were you on?
A. I was on the *Gulf Stream* for awhile.
Q. She had a collision, too?
A. I wasn't on her when she had the collision. I was on the *Elmwood* with Captain Clark.
Q. Do you know what wages Sarah Elam was getting at the time she was lost?
A. No, I don't know what wages she was getting.
Q. Did she get any advance when she left the Old Dominion and went into the Clyde Line?
A. I think she said she was going to get more, but I don't know how much.

280 By the COMMISSIONER:

Q. How much had she been getting in the *Old Dominion?*
A. We got $10 and our board on the *Old Dominion.*
Q. Staying there all the time?
A. Yes, sir.
Q. Even while you were in port?
A. Yes, sir.

Claim of Mary Anderson, administratrix.

MARY ANDERSON, being duly sworn as a witness in her own behalf, testifies as follows:

Mr. LONG: I offer in evidence the certificate of the appointment of Mary Anderson as administratrix of the estate of Sarah Elam, deceased, dated March 25th, 1905.

It is received in evidence and marked Anderson's Exhibit No. 2 of this date.

Examined by Mr. LONG:

Q. Are you married or single?
A. I am single.
Q. Where do you reside?
A. In Richmond, Virginia, 1901 East Main street.
Q. You are the person who is making the claim in this case for the death of Sarah Elam, who was your mother?
A. Yes, sir.
Q. When did you last see your mother?
A. The last I saw my mother was at 2 o'clock on Saturday night or rather Sunday morning, the 3rd of May, 1903.
Q. Where was she at the time?

A. She was at the corner of Main and 19th streets. She had taken a car.

Q. Where was she going?

A. She was going to the Clyde steamer *Saginaw*. I put her on a car at 2 o'clock.

Q. She was employed on the steamer as stewardess?

A. Yes, sir; that was the last I seen her alive.

281 Q. When did you next see her body?

A. That was on the 6th day of May, 1903, I saw her body.

Q. Where was her body at the time?

A. At the undertaker Morris' place, 527 Church Street.

Q. You afterwards shipped the body to Richmond where she was buried?

A. Yes, sir, the body was shipped to Richmond, where she was buried.

Q. What was the condition of health of your mother during the five years prior to 1903?

A. My mother's health was fine. My mother never lost a day from the time she was employed by the company until she was killed.

Q. How long was she in the employ of the Clyde Line?

A. Five years.

Q. By whom was she employed prior to that time?

A. By the Old Dominion Company.

Q. Was she stewardess there?

A. Yes, sir, for six years. In eleven years she never lost two weeks' work.

Q. That is the last eleven years of her life?

A. Yes. I have never known her to be sick before that I can remember.

Q. She was a very large woman, was she not?

A. Yes, sir, she was.

Q. How much did she weigh?

A. I guess that she weighed about 200 pounds.

Q. When you last saw her was she in good health?

A. Yes, sir, she was in fine health.

Q. Did she work steadily at her occupation as stewardess?

A. Yes.

Q. Do you know what her habits were so far as being sober?

A. Yes, sir; her habits were very good. She never had any bad habits whatever. She was faithful to her work and everything.

Q. She was a widow at the time?

A. Yes, sir; she had been a widow about twenty years.

Q. Do you know of any serious illness or any serious

282 physical injury that she had?

A. No, sir, except the two weeks; that is all I can remember.

Q. What caused her to lose the two weeks?

A. She only had a severe cold, that was all.

Q. When was that cold, do you remember, before she died?

A. That is when she was employed by the Old Dominion Company.

Q. About five years before she died?

A. Yes, sir, about five years before she died. That is before she went in with the Clyde Company.

Q. Do you know how your mother's body got to Norfolk?

A. They told me that the *Hamilton* brought it to Norfolk on the Old Dominion steamship.

Q. What did your mother make a month, do you know?

A. No, sir, I can't tell exactly how much she made.

Q. Have you any idea how much she made?

A. Well, mamma was taking care of the house; of course, I never found out what it was; I don't know whether it was $15 or $20 a month. I couldn't tell.

Q. By taking care of the house, do you mean that she paid the rent?

A. Yes.

Q. What rent did you pay for the house?

A. We paid $5 a month.

Q. Did you live in the house all by yourself,—did you have a house to yourself?

A. We only lived in the house with someone; we just had rooms in the house.

Q. How many rooms did you have?

A. We only had two rooms in the house.

Q. Did you do your own cooking in the house?

A. Yes, sir, we did our own cooking.

Q. Did your mother pay all the expenses for the two of you?

A. Yes, sir, she paid for the house affairs. Mamma never was home only one day a week. That was Saturday. I did a little bit of washing.

283 Q. Did you work yourself?

A. I did some washing, that is all.

Q. How old a woman was your mother?

A. She was 53 years old.

Q. Now, you paid some of the funeral expenses in this case, did you not?

A. Yes, sir, I did.

Q. Do you remember the bill which has been identified in evidence here by Mr. J. L. Morris for $83.50 as the cost of the burial of your mother?

A. Yes, sir.

Q. How much of that $83.50 did you pay?

A. I paid $33.50.

Q. Did you pay any other expenses connected with the funeral of your mother?

A. I paid $44.50 in Richmond.

Q. How was that $44.50 made up, do you remember?

A. For hacks and grave expenses. I paid $5 for flowers and other expenses $2,—church expenses.

Q. The total was $44.50?

A. Yes, sir, just the carriage and hearse expenses was $44.50.

Q. How much money, if any, did your mother have saved up?

A. Well, I don't know—I know she had some money, but she never told us anything about it. I think all the money she had she had in Philadelphia. She never had any on this side at all.

Q. It has been testified to here that your mother was about to buy a home: what do you know about that?

A. I don't know anything, all I know about it I just understood that when she died. I didn't know anything about it when she was leaving.

Cross-examined by Mr. PUTNAM:

Q. Did your mother ever put any money in a savings bank that you know of?

A. No, sir, I don't know what bank she put it in.

284 Q. She never spoke of putting any money in the bank?

A. No, sir.

Q. Did she leave any other children except you?

A. Yes, sir; I have two sisters.

Q. Are they older or younger than you?

A. They are younger than I am.

Q. Do they live in Richmond, too?

A. No, sir, one is in New York and one is here in Hampton.

Q. They take care of themselves?

A. Since mamma died they went away.

Q. Are they married?

A. No, sir, they are both single.

Q. What is the age of the sister-?

A. Well, I don't know my sister next to me, the age of her, but my youngest sister is 20.

Q. So they are able to earn their own living?

A. Well, I don't know just exactly.

Q. You don't furnish them with any money?

A. Yes, I have been taking care of my sister in Hampton ever since my mother died.

Q. How much money did you send her?

A. Every time she sends for money I will send her $5 or $10 or as much as I can spare. I take care of her.

Q. Whereabouts in Hampton is she?

A. I don't know her address; I know she is in Hampton, but I don't know exactly the address.

Q. How recently have you heard from her?

A. Six weeks ago.

285 *In re* Claim of PRIMUS GILMORE, as Administrator of the Estate of Alfred Gilmore.

CHARLES D. JOHNSON, being duly sworn as a witness in behalf of above named claim, testifies as follows:

Examined by Mr. FULLMAN:

Q. Where do you reside?
A. I reside here at Newport News, 3209 Chestnut Avenue.
Q. What is your business?
A. I am really head waiter and chief cook at present.
Q. What was your business in the early part of 1903?
A. Head waiter. I had been head waiter for nearly sixteen years.
Q. At what hotel were you employed just prior to May, 1903?
A. The Lexington Hotel, Newport News.
Q. Was there anyone employed there by the name of Alfred Gilmore?
A. Yes.
Q. In what capacity?
A. Dining room waiter.
Q. What was his color?
A. I would say he was a light colored man.
Q. Was he tall?
A. Tall and slender, about over 5 feet.
Q. About how old was he?
A. I don't know his age. He appeared to be about 22.
Q. He was under you as head waiter?
A. Yes.
Q. How long did he work there?
A. He worked there about two months that time. I had had him——
Q. Had he been employed there previously?
A. Yes; I had him on a couple of occasions before. One time was three weeks and another time it must have been over a week. Those were extra occasions.

286 Q. When did he leave there?
A. He left there about the 1st or 2d of May, somewhere along there; I don't remember the date.
Q. Do you know why he left?
A. Yes, he left there to go to Atlantic City, I think; I don't remember exactly, but he told me that he might go home first and then go to Atlantic City. Whether he changed his mind or not after he got to Norfolk I don't know.
Q. How much did he earn as waiter in that hotel?
A. He earned from $5.50 to $6 a week.
Q. Did he have his board there?
A. Yes, sir.
Q. What do you know about his reputation?
A. He had a good reputation, so far as I know. I never knew anything wrong or bad about him.
Q. Was he steady in his work?

A. Yes, sir, steady in his work; he was a good waiter.
Q. Did he lose any time while he was working there?
A. No, sir.
Q. Was he always prompt in getting to his work?
A. Yes.
Q. He wasn't a man that drank, was he?
A. No, sir, not to be excessive. I never seen him that way.
Q. What do you know about his education?
A. I will say that he had a fairly good education.
Q. Could he read and write?
A. Yes, sir.
Q. You say that you saw him for the last time about the 2d of May, 1903?
A. It must have been either the 1st or the 2d; I don't remember which now exactly.
Q. Did you have any conversation with him then?
—. No, sir, not in particular. I said to him and a fellow that was with him, "Good-bye," and that I hoped that they would have good luck.
Q. Who was with him?
A. Dave Rolland. He was with Alfred when he drowned, but he swam out some way. He came back here. I have heard that
287 he was in Norfolk. He may be there yet. He was knocked senseless and he didn't know how he did get out, but he managed to swim to something and got hold of it.
Q. Do you know whether Alfred saved any money while he was working for you?
A. I don't know whether he saved any money or not. He was always well dressed and had money, but whether he put any of it away or not I couldn't tell.
Q. Did he have any trunk when he was at the hotel?
A. He had one in his room, he had baggage in his room.
Q. Did he have clothes for waiting?
A. Yes, sir, he had a waiter's outfit.
Q. Did he leave the hotel of his own volition, or was he discharged?
A. He notified me a week before—in fact he was to go earlier than he did go. I lost my brother and I had him and Rolland along. I don't remember exactly what day that was.

Cross-examined by Mr. PUTNAM:

Q. Did you hire this man when he was in the hotel?
A. Yes.
Q. What day was it on which you hired him?
A. Well, I don't remember the date now.
Q. How long before he left?
A. He worked for me about three months that time.
Q. Was that the first time you became acquainted with him?
A. No, sir, I had him before that, but only on extra occasions.
Q. Was his home here in Newport News?
A. No, sir, North Carolina.

—. Do you know what place?
A. No, sir, I don't.
Q. When you first took him it was only as an extra man to fill a vacancy?
A. Yes.
Q. Did he have any steady job then?
288 A. He had been working somewhere, in fact, he had been working ever since he had been here.
Q. Working in a restaurant?
A. Yes, sir, from restaurant to restaurant all the time.
Q. The last time you engaged him you paid him how much a week?
A. I paid him $4.50 and with what he picked up he was making between $5 and $6.
Q. Did he have all that he picked up?
A. Yes, sir, it was all his.
Q. This man Rolland that you speak of, did you see him when he left?
A. Yes, sir; they left together.
Q. Did they both come from the same place?
A. They both came from North Carolina, but I don't know whether they both came from the same town or not.

By the COMMISSIONER:

Q. Was Alfred Gilmore married?
A. No, sir, he was single.

PRIMUS GILMORE, having been duly sworn as a witness in his own behalf, testifies as follows:

Examined by Mr. FULLMAN:

Q. Where do you live?
A. In Fayetteville, North Carolina.
Q. Was Alfred Gilmore your son?
A. Yes, sir.
Q. How old was Alfred?
A. He was about 18 years old, going on 19 when he died.
Q. About when did he leave Fayetteville?
A. Well, I don't know exactly how long he has been out here.
Q. How long before he died?
289 A. He has been out here two or three years before he died; about two years, I think.
Q. Are you married?
A. Yes, sir.
Q. Is your wife living?
A. Yes?
Q. Do you live with her down there?
A. Yes, sir.
Q. Did Alfred send you any money?
A. Oh, yes.
Q. How often did he used to send you money?

A. Every month, about.

Q. And did you use that money towards the support of yourself and wife?

A. Yes, sir.

Q. Have you any other children?

A. Yes, sir.

Q. How many?

A. I have six at home and three in New York.

Q. How old are your children at home?

A. I have all their ages down. I couldn't tell you everyone's age just now.

Q. How young is the youngest?

A. Five years old.

Q. About how old is the oldest?

A. The oldest at home I reckon is about 21.

Q. Are they all single?

A. Yes, sir, all at home is single.

Q. Do any of them work?

A. Yes, sir.

Q. Do they have any steady work?

A. Yes, sir, one of them works steadily.

Q. Which one is that, the oldest?

A. No, sir, the one next to the oldest works in the silk mills.

Q. What kind of a looking fellow was Alfred?

A. Well, he was a little taller than Allan there, his cousin, built slender.

Q. Light complected?

A. Yes, sir.

Q. Now, after he left home, how often did you use to hear from him?

A. Well, sometimes it would be two weeks, and then again it would be a month.

Q. When did you hear from him last?

A. I heard from him about a week before this occurred.

290 He said he was going to leave here again, going where his brother was in Philadelphia, and the next time I heard of him I got this telegram which I have in my pocket.

Q. You have not heard from Alfred since the wreck of the *Saginaw*, have you?

A. No, sir; I got a telegram which I showed you, saying that he was drowned.

Q. How was his health, pretty good?

A. Yes, sir, he was a good healthy boy.

Q. You were appointed administrator of his estate?

A. Yes, sir.

Mr. FULLMAN: I offer in evidence certified copy by the Clerk of the Superior Court of Cumberland County, North Carolina, granting letters of administration to Primus Gilmore as administrator of the estate of Alfred Gilmore, deceased.

It is received in evidence and marked Gilmore's Exhibit No. 1 of this date.

Cross-examined by Mr. PUTNAM:

Q. You say that you have three children that live in New York?
A. Yes.
Q. What do they do?
A. They are waiters.
Q. Do they send you any money?
A. Not now.
Q. Did they send you any money at first when they went there?
A. Yes, sir, until after they got married.
Q. The six children that you have at home, some of them are at work, aren't they?
A. Yes.
Q. How many of them are at work now?
A. Just two of them are at work.
Q. What work are they doing now?
A. One of them works in the silk mill and the other takes in washing.
Q. This one that works in the silk mill is a boy or a girl?
A. A girl.
291 Q. How long has she been working there?
A. She commenced last summer.
Q. Now, how much did Alfred ever send you in money at any one time?
A. Well, he has sent as high as $20.
Q. And during a year how much do you suppose he ever sent you?
A. Well, I don't know; I couldn't give an account of that during a year.
Q. Did he ever send you as much as $50 in a year?
A. I reckon he did; more than that.
Q. You haven't any account of it at all?
A. No, sir.
Q. Do you know what wages he had?
A. Well, he always said he was getting about $20 a month. I know before he left home he got over that when he was working with Mr. Ingo.
Q. Do you have a place of your own down home?
A. Yes.
Q. What is your own business?
A. I farm, haul wood.
Q. Raise truck?
A. Yes, garden stuff, etc.
Q. How old are you?
A. I am going on 59.

By Mr. FULLMAN:

Q. How long did Alfred go to school down in North Carolina?
A. Well, I don't know sir, really, how long he went. He would go all that we could spare him every school session.

Q. How long did he work for Mr. Ingo down there?
A. Well, don't know; ever since they started a dispensary. When he was going to break it up he came up here.
Q. How much did he earn there, do you know?
A. He made about $20 a month there right along.

By Mr. PUTNAM:

Q. When he worked there did he live at home?
A. Yes, sir.
292 Q. So that he had to pay his board out of that $20?
A. Yes, sir.

By the COMMISSIONER:

Q. How big a farm do you run, how much land have you?
A. I ain't got so much of my own, all I tend ain't mine. I have a place of my own that I rent, about twenty-five acres, and haul around, first one thing and then another, and plow for other people.
Q. How many teams have you?
A. I have two horses.

ALLEN J. STEVENS, being duly sworn as a witness in behalf of above claim, testifies as follows:

Examined by Mr. FULLMAN:

Q. Where do you live?
A. My home is at Fayetteville, North Carolina.
Q. Where do you live here in Newport News?
A. My home is 2415 Jefferson Avenue.
Q. What is your business?
A. Porter.
Q. Where?
A. At Meyers Brothers store here. I have been there nine years.
Q. Did you know Alfred Gilmore in his lifetime?
A. Yes, sir; I knew him before he knew himself.
Q. You knew him down in North Carolina, did you?
A. Yes.
Q. You have known him ever since he came to Newport News?
A. Yes.
Q. How long was he in Newport News before he died?
A. Well, something better than two years, between two and three years.
Q. What was he doing here during that time?
A. Well, he was a waiter almost all the time.
293 Q. Where?
A. He worked nearly a year at the Peninsula Restaurant run by Mr. Welsh.
Q. Do they own it now?
A. No.
Q. Then where did he work?
A. He worked at the Lynhurst Hotel.
Q. Where else?

A. He worked at the Lexington Hotel.

Q. What kind of a looking fellow was he?

A. He was near as tall as you and near your build and real light complected.

Q. A good healthy fellow?

A. Yes, I have never known him to be sick in my life excepting when he was small. In fact, I have been away from home on and off fourteen years and I have never known him to be sick since he was here.

Q. Could he read and write?

A. A little; he had no great education, but he could read and write his own letters.

Q. Did he know how to make up waiter's checks?

A. Yes, sir; he could make up waiter's checks, he could read them and the bill of fare.

Q. How were his habits?

A. They were good; he wasn't a Christian boy, but I have never known anything to happen to him while I was here.

Q. When did you last see him?

A. On Monday morning; I forget the date now. I had a long talk with him Sunday afternoon. We were living at the same house. Monday morning he was coming by the store and bade me good-by.

Q. How often did you see him before that time?

A. Every day; we lived at the same house.

Q. When he was away from Newport News, did you use to hear from him occasionally?

A. I never heard from him until he came here.

Q. Where did you see him on this occasion that you speak of?

A. On Washington Avenue, in front of our store.

Q. What happened there?

294 A. I bade him good-by again. He said that he was going to catch the 10 or 12 o'clock express and going away that night.

Q. Did he say where he was going?

A. He said he was going to New York, where his brother worked. He didn't know his address and was going up to Philadelphia.

Q. How was he going to Philadelphia, did he say?

A. On the Clyde Line.

Q. Was anybody going with him?

A. Dave Rolland; they were waiters together.

Q. You say this was on Monday?

A. Yes, sir, it was Monday morning.

Q. About when was it, have you any idea?

A. It was in 1903, either April or May.

Q. Can you remember when it was with relation to the sinking of the *Saginaw?*

A. Him and Rolland went to Norfolk and Rolland came back and gave the whole statement afterwards. They caught the Clyde Line at 6 o'clock——

Q. Was this conversation you had here with your cousin before or after the *Saginaw* sank?

A. Oh, before.

Q. How long before—was it the Monday morning before the *Saginaw* sank?

A. Yes, sir; she sank Tuesday morning and I heard that Alfred was lost.

Q. Did you see Alfred have any baggage with him?

A. No, sir, he had a suit case, I believe he said he was going up home to get his suit case before he left.

Q. You never saw him after that time, did you?

A. No, sir, I didn't.

Q. Who went to the boat with him, do you know?

A. My brother, the dead brother. He left that day and said he went to Norfolk with him.

Q. When did he die?

A. June 3rd, last year.

Q. Do you know how much Alfred earned?

295 A. I couldn't say exactly, from $4.50 to $5 a week; that is about what they pay the waiters, $5 and $6 for the best waiters and besides what they made on their tips. Sometimes they would pick up between $8 and $9 a week.

Q. Did he always dress pretty well?

A. Yes, perfectly neat and decent looking, fit to go in any hotel.

Q. Was he ever sick?

A. I never knew him to be sick in my life. He was very healthy and strong, he was an able-bodied man and never complained at all.

Q. Did he work steadily?

A. Yes, sir; he didn't work in any one place any great length of time, but when he was out of one job he would go right into another one.

Cross-examined by Mr. PUTNAM:

Q. When did you first know of his coming here from Fayetteville?

A. I didn't know anything about it until he was here.

Q. What time was it?

A. I haven't kept no strict account of it, but it has been about a little better than two years ago, not quite three years before he left there.

Q. During all that time did he stay all that time here?

A. Yes, sir.

Q. Did he work always in one place, or in different hotels?

A. He worked in different places here; he worked all around during that time.

Q. Wasn't there sometimes that he was out of a job?

A. Yes; he was never satisfied, you know. He wasn't out of a job not to exceed two weeks hardly before he would have a job somewhere else at the same work.

Q. There are a good many restaurants here at Newport News where they employ waiters like him?

296 A. Yes, sir, a good many restaurants here.

Q. What is your own business?

A. I am a porter in a dry goods store.

Q. You have been in the same place all this time?
A. Close on to nine years.
Q. When he first came here he came to see you, didn't he?
A. Not me especially. There was four of his brothers here at that time.
Q. Cousins of yours?
A. Yes.
Q. Do you know how long he stayed here before he got a job?
A. My brother June got him a job the next week.

In re OLD DOMINION STEAMSHIP CO.

In re CLYDE STEAMSHIP CO.

PHILADELPHIA, PA., *April* 10, 1905.

Met pursuant to adjournment.
Present: The Commissioner, Mr. Long, Mr. Fullman, and Mr. Hough, representing Messrs. Wing, Putnam & Burlingham.

Elam, Morris & Goslee Claims.

AMBROSE AMAN, being duly sworn as a witness in behalf of the above mentioned claims, testifies as follows:

Examined by Mr. LONG:

Q. You are assistant manager of William P. Clyde & Co.?
A. Yes, sir, at Philadelphia.
Q. I ask you to produce the crew list of the steamship *Saginaw* on the voyage ending with the collision on May 5, 1903?
A. Yes, sir.
297 Q. Referring to that crew list, will you tell me whether or not Sarah Elam was a member of the crew of the steamship *Saginaw*, and if so, what her position was in the crew?
A. Yes, sir; Sarah Elam, according to our best records, was Stewardess.
Q. Can you tell me from that record what wages Sarah Elam received from the Clyde Line?
A. She received $12 per month and found.
Q. By that you mean her board on the steamer?
A. Under Philadelphia arrangements the Captain was allowed $17 for a man for provisions of the crew.
—. And when you say "found" you refer to that $17?
A. I do, yes, sir.
Q. That was to pay her board?
A. Her expenses, $29 a month with her wages.
Q. Referring again to the crew list, can you tell me whether or not Edward S. Goslee was a member of the crew of the *Saginaw?*
A. Yes, sir; he appears on the list as the Chief Officer.
Q. Can you tell me from your list what his wages were?
A. 6 a month and found, costing the company $77 a month.

Q. Referring again to the list, can you tell me whether or not William Morris was a member of the crew of the steamship *Saginaw?*

A. Yes, sir; his position was Steward.

Q. What was his rate of wages?

A. $35 per month, plus $17, making $52 a month.

By the COMMISSIONER:

Q. Was he the Chief Steward?

A. Yes, sir, in fact the only Steward we had. She wasn't a passenger vessel to any extent.

Cross-examined by Mr. HOUGH:

Q. Were the members of the crew of the *Saginaw* entitled
298 to their board, or, in other words, were they found while the vessel was in port?

A. Yes, sir; the $17 per month per man covered that.

Q. Was the allowance of $17 per month to the Captain so far as you know actually expended by him or was he permitted or expected to make a profit therefrom?

A. I don't know personally, but the general feeling is that there is a profit in that provision allowance.

Q. How long have you been connected in business with the Clyde Steamship Co.?

A. I have been connected in business with them—it will be 30 years September 25, 1905.

Q. Was not the provisioning of the crew well known to you and other officers of the Clyde service to be a source of profit to the Captain?

Mr. LONG: Objected to.

Objection overruled; exception.

A. I think I can say that it was so understood.

Q. How long has Mr. Goslee been connected with the Clyde Line?

A. About 30 years.

Q. How long had Morris been in the service of the Clyde Company?

A. I can't give you any authentic information as to that, but our best judgment is that he was in the service of the company about six or seven years.

Q. How long had Sarah Elam been in the service?

A. Our best information is that she was in the service about the same length of time.

By Mr. LONG:

Q. Did you know Goslee personally?

A. Yes, sir, I knew him personally.

Q. Do you know whether or not he has lost any time from
299 his employment in the last five years on account of illness?

A. That I don't know; I cannot recollect whether he has or not.

Q. Do you know whether or not he had a license to act as Captain?
A. I am not prepared to state that.

By the COMMISSIONER:

Q. How old a man should you say Mr. Goslee wes?
A. Well, of course, it is hard for me to say that; I should say between 55 and 60.
Q. And William Morris?
A. I didn't know Morris at all.
Q. Sarah Elam?
A. I didn't know her, except by name.

By Mr. LONG:

Q. Will you tell me just what this paper is?
A. That is a copy of the official payroll of the steamer on file at our office.
Q. And this copy was made by you?
A. No, sir, not personally.

By Mr. HOUGH:

Q. Has this paper been compared by you?
A. Yes, sir.
Q. Is it correct and true?
A. Yes, sir, to the best of my knowledge and belief.

Mr. LONG: I offer the paper in evidence.
The paper is received in evidence and marked Goslee, Morris and Elam Exhibit No. 1, April 10, 1905.

300 *Goslee Claim.*

ALVIN L. JOSEPH, being duly sworn as a witness in behalf of the above claim, testifies as follows:

Examined by Mr. LONG:

Q. You are one of the executors under the will of Edward S. Goslee, deceased, are you not?
A. Yes, sir.
Q. And as such executor you have made the claim in this case against the Old Dominion Steamship Co.?
A. Yes, sir; I have made the claim.
Q. That will has been probated in the office of the Register of Wills of Sussex County, Delaware, has it not?
A. Yes, sir.
Q. And letters testamentary have been issued to you and Maggie E. Goslee as executors named in the will?
A. Yes, sir.
Q. Were you related to Edward S. Goslee, the deceased?
A. Yes, married his sister.

Q. Then you are his brother-in-law?
A. Yes, sir.
Q. Were you well acquainted with Mr. Goslee?
A. I was, yes, sir.
Q. About how old was Mr. Goslee at the time of his death?
A. He was about right near sixty, I think.
Q. What was his occupation?
A. He was a seafaring man.
Q. He had been a seafaring man practically all his life, had he not?
A. Yes, sir, he was a seafaring man all his life.
Q. When was the last time that you saw Mr. Goslee?
A. Why, I seen him about sometime during the winter before he was lost in May. I can't recollect just what time it was.
301 Q. What was his weight at that time, should you say?
A. His weight was somewheres about 180 pounds, I think.
Q. And what was his height?
A. He was a little taller man than I am.
Q. He was about 5 feet 10 high?
A. About 5 feet 10, yes, somewheres thereabouts.
Q. What was the condition of Mr. Goslee's health at the time you saw him?
A. Very good.
Q. How much time had Mr. Goslee lost within the last five years prior to the accident, on account of illness?
A. I don't think that he lost any.
Q. Had he any chronic physical complaint at any time?
A. No, sir.
Q. Had he received any injury, to your knowledge, prior to this accident?
A. No, sir.
Q. What were Mr. Goslee's habits, so far as sobriety and industry were concerned?
A. He was a hard-working man, that is all I can say. I don't know of any habits he had that were bad at all.
Q. He was not a drinking man, was he?
A. No, sir, he wasn't a drinking man.
Q. Do you know what Mr. Goslee made each month, what his rate of wages were?
A. I think he made about $60 a month.
Q. Now, do you know, what Mr. Goslee's mother's age was when she died?
A. Eighty-one.
Q. And what was his father's age?
A. His father was about 70 years old when he died, I believe.
Q. As executor, you do know what Mr. Goslee's savings amounted to, do you not?
A. Why, somewheres in the neighborhood, I expect.
Q. Did Mr. Goslee leave any real estate at the time he died?
A. Yes, sir.

Q. Will you tell me what real estate he left?
A. He left one farm, worth I suppose about $5000, not less than that.
302 Q. How many acres in that farm?
A. It is a farm of about 200 acres, I believe.
Q. Where is that farm located?
A. The farm is located at Long Neck, Sussex County, Delaware.
Q. What other real estate did he leave?
A. He left another farm, near Oak Orchard in the same County and State. I think there is about 60 or 70 acres of that.
Q. What is that farm worth?
A. Well, I should say that that farm is worth about $2,000.
Q. Did he leave any other real estate?
A. There is about 40 acres, I think, near the home place, that is the first farm.
Q. Do you know what that was worth?
A. That was worth about $700, I think.
Q. You base that upon what he paid for it?
A. That is what he paid for it several years ago, but it could not be bought for that now.
Q. Did he have any savings fund at the time he died?
A. Yes, sir; he had about $2,500, I think, in the savings fund.
Q. Where was that?
A. Here in Philadelphia.
Q. Is that the Philadelphia Savings Fund?
A. Yes, sir, here in Philadelphia, at 17th and Walnut Street.
Q. And that comprised his whole estate?
A. Yes, sir, that comprised his whole estate; that is about all.
Q. In fixing the value of the first farm at $5,000 you include the dwelling house, the out-buildings and the stock on the farm, do you not?
A. Yes, sir.
Q. Does that include the farm implements?
A. Yes, sir, that includes the farm implements.
Q. And that applies to both the farms, does it not?
A. Yes, sir, that applies to both the farms.
Q. As to the 40 acre farm, there is no dwelling house on that, I understand?
A. No, sir.

303 Cross-examined by Mr. HOUGH:

Q. How long had you known Mr. Goslee?
A. I had known him about 20 years, I think.
Q. When you say that he was about 60 years of age do you base that upon your observation or on anything that Mr. Goslee told you?
A. I base that on what he told me.
Q. Did Mr. Goslee reside on either of the farms that you have described?
A. No, sir, he didn't—of course, when he had a little time off he made that his home, that is, what time he was off.

Q. Did he have any family in the sense of being married, have a wife or any children?
A. No, sir, he had no wife; he never was married.
Q. He has always been a bachelor?
A. Yes, sir.
Q. At the time of his death were either his father or his mother living?
A. No, sir, neither one of them.
Q. Did Mr. Goslee leave any brothers with him when he died?
A. Yes, sir, he left one brother.
Q. How old is that brother?
A. I think he is about—I won't say exactly, but I should say he is somewheres over 50.
Q. Is he married?
A. Yes, sir, he is married.
Q. Where does he live?
A. He lives near Georgetown, Sussex County, Delaware.
Q. Is he a self-supporting man?
A. Yes, sir.
Q. What does he do for a living?
A. He is a farmer.
Q. Does he live on his own farm?
A. Yes, sir.
Q. With his own family?
A. Yes.
Q. Did Mr. Goslee leave any other brothers besides this one?
A. No, sir, there was only two brothers.
Q. Did he leave any sisters living at the time of his death?
A. There are four sisters.
304 Q. One of his sisters is your wife, is she not?
A. Yes, sir.
Q. She was living at the time of Mr. Goslee's death?
A. Yes, sir.
Q. And is still living?
A. Yes, sir, she is still living.
Q. I presume, Mr. Joseph, you support her, do you not?
A. Yes, sir.
Q. Now, give me the names of the other sisters left by Mr. Goslee?
A. Maggie E. Goslee.
Q. Where does she live?
A. Maggie E. Goslee lives with me; as a rule she makes her home with me.
Q. Is she unmarried?
A. She is not married.
Q. How old is she?
A. She is somewhat over forty; I don't know exactly.
Q. Does she follow any occupation?
A. Nothing particularly, any more than housework or something of that sort. She has no particular trade.
Q. What is the name of the third sister?
A. That is Mary Salmons.

Q. Has she a husband living?
A. She has, as far as I know.
Q. Where does she live?
A. She lives in the neighborhood of Georgetown, Delaware.
Q. What is the name of the fourth sister?
A. Elizabeth McColley.
Q. Where does she live?
A. She makes her home in Wilmington, Delaware.
Q. Has she a husband living?
A. Yes, sir.
Q. So far as Mrs. McColley and Mrs. Salmons are concerned, do you know whether or not their husbands support them?
A. I presume they do.
Q. You don't know anything to the contrary?
A. No, sir, I don't know anything to the contrary.
Q. Where did Mr. Goslee live when he was on shore?
A. He stayed at his farm.
305 Q. Did he have a tenant on the farm?
A. I was at the farm.
Q. You rented the farm from Mr. Goslee, did you.
A. Yes, sir.
Q. That is what you call the home farm?
A. Yes, sir, that is what we call the home place.
Q. And the largest one?
A. Yes, sir.
Q. So that your home which is the same place as Mr. Goslee's farm was also his home when he was on shore?
A. Yes, sir.
Q. How long had that arrangement lasted, that condition of things lasted, before Mr. Goslee's death?
A. I was there when he was there.
Q. How long had you been living there?
A. I had been living there for the last twelve or fourteen years.
Q. Prior to his death?
A. Yes, that was his home place.
Q. So far as you know, either as executor or as kinsman by marriage whom did Mr. Goslee support of all of this number of relations?
A. Well, he had a single sister that he supported.
Q. Any others besides Miss Maggie Goslee?
A. None others that I know of.
Q. You think he did support Miss Maggie Goslee?
A. Oh, yes.
Q. So far as you know, did Mr. Goslee leave any life insurance?
A. No, sir, he didn't.
Q. Do you know of any other person besides his sister Maggie to whose support Mr. Goslee contributed?
A. No, sir, I don't.
Q. Did Mr. Goslee leave surviving him any nephews or nieces who were the children of any brother or sister that died before he did?

A. Not that I know of.

Q. So that the whole family consisted of himself and his one brother and his four sisters whom you have enumerated, is that right?

A. Yes, sir.

306 Q. When you said that you didn't know that Mr. Goslee had within five years before his death lost any time on account of illness do you know of your own knowledge whether he did or not?

A. Well, I am satisfied that he lost no time, because we heard from him pretty much every week and if there had been anything of the kind I would have known it.

Q. Then I gather that as long as you knew him, that is, for about 20 years he was a healthy, active, vigorous man?

A. Yes, sir.

Q. And very saving of his money was he not?

A. Yes, sir.

Q. And considering his opportunities in life, he was a prosperous man, was he?

A. Yes.

Q. At the time of his death had he, so far as you know, any source of income or revenue except his salary as a seafaring man and what he got out of his real estate and savings?

A. None that I know of.

Q. He had no other business or occupation, had he?

A. No, sir.

Q. Had he ever spoken to you of any intention of retiring from his seafaring life?

A. No, sir, not to my recollection that I know of.

Q. So far as you know, he intended to go on with that as long as his health and life would permit?

A. Yes.

By the COMMISSIONER:

Q. Do you know whether he had Master's papers?

A. I think he had, yes, sir.

The COMMISSIONER: It is admitted that he was on the *Saginaw?*

Mr. LONG: I think the testimony on the merits brings that out.

307 By Mr. LONG:

Q. You saw Mr. Goslee very often, did you not, in the course of a year?

A. Well, maybe twice or three times, maybe more.

Q. If he had had any serious illness or had been sick at all you would have known it, would you not?

A. Certainly I would have known it.

Q. When you say that Mr. Goslee had four sisters you were in error, there was one other sister, Mrs. James S. Tunnell?

A. Yes, that is right.

Q. She is married and supported by her husband?

A. Yes, sir.
Q. She is one of the beneficiaries under the will of Mr. Goslee, is she not?
A. Yes, sir.
Q. So far as Maggie Goslee was concerned Edward S. Goslee was her sole support, was he not?
A. Yes, sir, he was indeed her only support.
Q. And at this time she has no other support except what she received from his estate, is that not true?
A. Yes, sir, that is true.
Q. She makes her home with you does she not?
A. Yes, sir.
Q. You own a farm yourself, do you not?
A. Yes, sir, I do.
Q. And you were acting as tenant of Mr. Goslee's farm as a matter of convenience for him, were you not?
A. Yes, sir.
Q. You were keeping up the old farm?
A. Yes, sir.
Q. Did you work that farm?
A. Yes, sir, I worked it.

By Mr. HOUGH:

Q. How did you work it, on shares or by rent?
A. Well, by rent, principally.

308 MAGGIE E. GOSLEE, having been duly sworn as a witness in behalf of the above mentioned claim, testifies as follows:

Examined by Mr. LONG:

Q. You are one of the executors of the estate of Edward S. Goslee, deceased, are you not?
A. Yes, sir.
Q. And you live on a farm in Sussex County, Delaware?
A. Yes, sir.
Q. That is Indian River Hundred?
A. Yes, sir.
Q. You are one of the parties who has made the claim in this matter?
A. Yes.
Q. Do you know what Mr. Goslee's age was at the time of his death?
A. Yes, sir; he was sixty years old.
Q. You are his sister, are you not?
A. Yes, sir.
Q. You are unmarried?
A. Yes, sir.
Q. And his occupation was a seafaring man, was it?
A. Yes, sir.
Q. Do you know anything about his habits, so far as his being economical and sober were concerned?

A. Yes, sir, his habits were very good.
Q. Now, as to his health, can you tell me how much time he had lost within the last five or ten years before this accident?
A. He didn't lose any time.
Q. When did you last see him, do you remember?
A. It was two or three months before the accident.
Q. At that time what was the condition of Mr. Goslee's health?
A. It was in good condition.
Q. Was he a man who had very much sickness?
A. He never had any.
Q. How old was your father at the time that he died?
A. He was seventy.
309 Q. How old was your mother?
A. She was eighty-one.
Q. How old is your oldest sister now about?
A. I think she is about seventy.
Q. That is Mrs. McColley?
A. Yes.
Q. You have four sisters and a brother, have you not?
A. Yes.
Q. How old is the youngest of the family?
A. She is about thirty years old.
Q. That is Mrs. Joseph, is it?
A. Yes, sir.
Q. Do you know how much Mr. Goslee made each month?
A. $60.
Q. How long had he been making that, about?
A. I don't know just how long.
Q. Had he captain's papers, a captain's license as well as a mate's license?
A. Yes.
Q. Do you know anything about his ability to work up to the time of the accident?
A. It was very good.
Q. Who supported you before your brother died?
A. My father——
Q. After your father's death, who supported you?
A. My brother supported me.
Q. Edward S. Goslee?
A. Yes.
Q. And he was your sole support, was he not?
A. Yes, sir, he was.
Q. Now, do you know whether or not he received any injury before this wreck, any serious injury?
A. No, sir.
Q. Did he have any chronic disease that you knew of?
A. No, sir.
Q. Had he had any serious illness of any kind before his death?
A. No, sir.
Q. You are one of the executors of his estate ?
A. Yes, sir.

Q. What real estate did Mr. Goslee leave?
A. He left one farm that is valued at $5,000.
310 Q. And that is located in Sussex County, Delaware?
A. Yes, sir.
Q. Did he leave another farm?
A. Yes.
Q. And that is located there, is it not?
A. Yes, sir.
Q. What is the value of that farm?
A. About $2,000.
Q. That figure includes the dwelling house and the stock on the farm?
A. Yes.
Q. Did he leave any other property?
A. Yes, sir, there was another small farm.
Q. How many acres in that farm?
A. I think about 40 or 50 acres.
Q. Do you know what that farm is worth?
A. That farm is worth $700, I believe.
Q. That is what he paid for it when he bought it?
A. Yes, sir, that is what he paid for it.
Q. How long had he held that, do you know?
A. I don't exactly know.
Q. Now, this home place Mr. Goslee bought from the other heirs, did he not?
A. Yes.
Q. He also bought the other farm from the heirs, did he not, bought that outright, did he not?
A. Yes, for $2,000.
Q. And the street place or the 40 acre farm he also bought, did he not?
—. Yes, sir.
Q. Did Mr. Goslee have any money in any savings fund when he died?
A. Yes, sir, he did.
Q. About how much was it?
A. About $2,500.
Q. And that made up his estate, did it not?
A. Yes.
Q. And your support now is the money which you had derived under his will from his estate, is it not?
A. Yes, sir.

Cross-examined by Mr. HOUGH:

Q. When did your father die?
A. 1877.
311 Q. Did you not inherit anything under your father's will as the result of his death?
A. No, sir.
Q. Since your father's death in 1877 have you had any other

means of support than through the kindness and affection of your brother who is now dead?

A. That is all.

Q. And for how long have you lived upon what you call the home farm?

A. I have lived there all the while. I was born there.

Q. So what you call the home farm has been your home all your life, whether it belonged to your father or to your brother?

A. Yes, sir.

Q. And it is still your home?

A. Yes, sir.

Q. Was the real estate which Mr. Goslee left free and clear of incumbrances?

A. Yes, sir.

Q. No mortgages?

A. No, sir.

Q. How old are you?

A. Forty.

Q. I understood you to say that your oldest sister was now seventy?

A. Yes, sir.

Q. And that your youngest sister, Mrs. Joseph, is now thirty?

A. Yes, sir.

Q. Were they the children of the same mother?

A. Yes, sir.

Q. Then all your sisters and brothers are of the whole blood?

A. Yes, sir.

E. PAUL TUNNELL, being duly sworn as a witness in behalf of the above claim, testifies as follows:

Examined by Mr. LONG:

—. You are the son of Captain Tunnell, who was the master of the steamship *Saginaw,* are you not?

A. I am.

Q. You also were the nephew of Edward S. Goslee, the
312 first mate, who was drowned?

A. Yes.

Q. Do you know anything about your uncle's health up to the time of the accident?

A. It was very good. He never lost a day with the exception of going to his mother's funeral, in a good many years.

Q. He was a man that kept himself strictly to his work, did he not?

A. Yes.

Q. And he had about one day off each week?

A. One night off.

Q. Do you know anything about his habits, so far as economy and sobriety were concerned?

A. He was a very temperate man and very liberal and very economical.

Q. Do you know whether or not he had received any injury up to the time of the accident, any serious injury?

A. He did not, not that I knew of.

Q. Did he have any serious illness a short time before this accident?

A. No, sir, he had no serious illness before the accident.

Q. Do you know what your uncle's wages were each month?

A. $60 a month and found.

Q. By "found" that means the board?

A. That means the board and lodging.

Q. Do you know about your uncle's savings, what he had saved?

A. Yes.

Q. What did he leave at the time of his death, what did his estate consist of?

A. He left about $2,500 in the Philadelphia Savings Fund and three farms in Delaware, one of which is appraised at $5,000, another at $2,000 and another at $700 or $800.

Q. The farm valued at $5,000 is the farm in Indian River Hundred known as the Long Neck Farm, is it not?

A. Yes, sir.

Q. And the farm valued at $2,000 is known as the Oak Orchard Farm, is it not?

A. Yes, sir.

313 Q. And the other farm is known as the Street Place, is it not?

A. Yes.

Q. Do you know of any one who was dependent upon your uncle for support?

A. Yes.

Q. Who is that?

A. Maggie E. Goslee.

Q. She was his sister, was she not?

A. Yes.

Q. He was an unmarried man and had no children?

A. Yes.

Primus Gilmore Claim.

DAVID ROLAND, having been duly sworn, as a witness in behalf of the above claim, testifies as follows:

Examined by Mr. FULLMAN:

Q. Where do you live?

A. I live at Atlantic City at the present time.

Q. Is that your home?

A. No, sir, that isn't my home.

Q. Where is your home?

A. My home is at Newport News.

Q. What is your business?

A. Waiting.
Q. Where?
A. At Gray Hall, Atlantic City.
Q. Did you know Alfred Gilmore in his life time?
A. Yes, sir, I did.
Q. How long before his death had you known him?
A. About two years.
Q. Where?
A. Newport News, Va.
Q. How intimately during that time had you known him?
A. Well, I and him had been working there -or about two years off and on.
Q. Where did you work with him last before his death.
A. We worked at the Lexington Hotel, Newport News.
Q. Do you know how long he worked there altogether?
314 A. No, sir, I don't know exactly how long he worked there altogether.
Q. About how long did he work there?
A. Well, about a year, I suppose, as near as I can give it to you.
Q. Did you work there too at that time?
A. Yes, sir.
Q. Do you know about what he made working there a week?
A. About $6 a week.
Q. Did he receive outside of that his board?
A. Yes, sir, room and board.
Q. Now, when did he leave the employ of the Lexington Hotel at Newport News?
A. Well, I don't know exactly the time that he left; we left together.
Q. About when do you know with reference to the collision of the Saginaw, about how long before?
A. We left about a day before.
Q. What sort of an appearing fellow was Gilmore?
A. He was about half a head taller than I am; he was about 5 feet 8.
Q. Light colored, was he?
A. Yes, sir, lighter than I am.
Q. Have you any idea how much he weighed?
A. No, sir, I don't know what he weighed.
Q. Do you know anything as to his habits?
A. His habits were very good, so far as I know.
Q. Did he work steadily?
A. Yes.
Q. Do you know whether he had saved any money while he was at Newport News?
A. He had saved some money, yes, sir.
Q. Do you know how much?
A. No, sir, I don't know how much.
Q. Do you know whether he sent any money home to his folks?
A. I know he used to send some money to his father.

315 By the COMMISSIONER:

Q. That is Primus Gilmore?
A. Yes.
Q. His father's name was Prymus?
A. Yes; I wasn't very well acquainted with his father.

By Mr. FULLMAN:

Q. What was the condition of his health at the time you knew him?
A. His health was good.
Q. Did he lose any time through illness?
A. No, sir, he didn't lose any time by illness.
Q. Now, when you left the Lexington Hotel at Newport News, where did you and he go?
A. We went to Norfolk, Va.
Q. And were you with him at the time that he purchased his ticket to go to Philadelphia?
A. Yes.
Q. You saw him buy his tickets, did you?
A. Yes, sir, we bought our tickets at the same time together.
Q. Did he have any baggage with him?
A. Yes, sir.
Q. What did he do with his baggage?
A. Well, he had his baggage with him.
Q. What kind of baggage was it?
A. He had a trunk.
Q. Did he check the trunk?
A. Yes, sir.
Q. And then you and he went aboard of the steamer together, did you?
A. Yes, sir, then he and I went on board together.
Q. And you were with him all that evening?
A. Yes, sir, I was with him all the evening.
Q. What time did you go aboard the boat, about?
A. I think it was about seven o'clock, as near as I can give it, half-past six or seven o'clock. I don't know the exact time.
Q. About what time did you go to bed, do you know?
A. I think it was about 12 o'clock.
316 Q. You saw him immediately before he turned in, did you?
A. Yes, sir, we were together all the time.
Q. What day was it that you left Norfolk?
A. I have done forgotten the day.
Q. Don't you know the day of the month?
A. I have forgotten the day of the month; it was in May.
Q. May, 1903?
A. Yes, sir.
Q. Do you know what day the *Saginaw* sank?
A. No, sir, I do not.
Q. Do you know the day of the week that it was?

A. I have done forgot the day of the week.
Q. What boat did you board?
A. All I know they called it the Clyde Line steamer.
Q. You don't know the name of her?
A. No, sir; I had never been on it before; I don't know anything about that, what the name of it was.
Q. When you both turned in when did you next see Gilmore alive?
A. I didn't see him until the next morning.
Q. About what time?
A. Well, I suppose, as near as I can remember, it was about 5 o'clock.
Q. Was it fairly light?
A. Yes, sir, it was beginning to get light.
Q. When did you see him then,—where was he then?
A. I saw him out on board of the ship first, out on the deck running around.
Q. Was that after the collision between the two steamers had taken place?
A. Yes, sir, that was after the collision.
Q. You came up on deck and you saw Gilmore then?
A. Yes, sir, and I and him was together on deck.
Q. When did you next see him?
A. I and him was standing together for awhile thinking what we would do and then I next saw him it was out in the water struggling.
317 Q. You were picked up, were you?
A. Yes, sir.
Q. Who were you picked up by?
A. I was picked up by the crew of the boat that ran into us.
Q. Do you know the name of it?
A. No, sir, I don't know the name of the boat.
Q. Was it the *Hamilton?*
A. Yes, sir; I think that was the name. I had never been on that boat before and I don't know anything about it.
Q. Among those that were picked up in the water, did you see Gilmore?
A. No, sir, he wasn't among them.
Q. You never saw him again after you saw him in the water?
A. No, sir, I never saw him again after I saw him in the water.
Q. Prior to his death you saw him very often, did you?
A. Yes, sir.
Q. He made his home in Newport News, did he?
A. Yes, sir.
Q. You have been back there since the collision, have you?
A. Yes, sir.
Q. You didn't see him there?
A. No, sir.
Q. You never have heard anything from him?
A. No, sir.

Q. Do you know whether he had any money with him when he went on board of the boat?
A. Yes, sir, he had some money.
Q. Do you know how much he had with him?
A. No, sir, I don't know how much he had with him.
Q. What were his habits with respect to his appearance and dress?
A. He dressed nicely.
Q. He dressed pretty well, did he?
A. Yes.
Q. Always neat?
A. Yes, sir, always neat; he always took care of himself.

By the COMMISSIONER:

Q. How old was he?
A. I don't know his age.
Q. Was he older than you?
318 A. Well, I suppose he was about 21 or 22. I really don't know his age.
Q. How old are you now?
A. I am 23 years old.
Q. You were a little younger than he was at the time of his death?
A. I was a little older than he was, I suppose. I don't know his age exactly.

By Mr. LONG:

Q. You don't know anything about his education?
A. No, sir, only I know that he could read and write.

Cross-examined by Mr. HOUGH:

Q. How long have you lived in Newport News before you came up on this boat that was sunk?
A. I had been there about three years.
Q. Had you known Gilmore all the time you had lived in Newport News?
A. I knew him about two years.
Q. He came there after you did?
A. I don't know anything about that.
Q. You didn't meet him until you had been living in Newport News about a year, is that right?
A. Yes, sir, that is right.
Q. Where did you meet him, in the hotel?
A. Yes, sir, at the hotel.
Q. You met him when he came to work in the hotel you were working at, is that right?
A. Yes.
Q. That was the Lexington Hotel, was it?
A. Yes, sir, that was the Lexington Hotel.
Q. You and he were both waiters there, were you?
A. Yes, sir.

Q. Getting the same wages?
A. Yes.
Q. That was $6 a week and found, was it?
A. Yes, sir.

319 By the COMMISSIONER:

Q. Did you get any tips?
A. Yes, sir.
Q. How much a week would you get?
A. Oh, well, some weeks we would get more than others; I suppose on an average about $3 a week, I should think.

By Mr. HOUGH:

Q. Did Gilmore have a wife?
A. No, sir.
Q. He was a single man?
A. Yes.
Q. Do you know anything about his relati-ns?
A. Yes, sir. I know something about his—I know three of his cousins.
Q. Were they living in Newport News?
A. Yes.
Q. Do you know whether he had any brothers or sisters?
A. No, sir, I don't know whether he had any brothers or sisters.
Q. Did you ever hear him speak of having brothers and sisters?
A. I heard him speaking about his brother, but not much about his people.
Q. You never heard him speak about his sister?
A. No, sir.
Q. Did you ever hear him speak of more than one brother?
A. No, sir.
Q. What part of the country had he come from originally, if you know?
A. Well, I don't know.
Q. You said you thought he sent some money to his father; do you know where that father lived?
A. No, sir, I don't know where his father lived.
Q. How do you know that he did send money to him?
A. I used to see him——
Q. You only know what he said?
A. Yes, sir, I only know what he said.
Q. When you and he worked at the Lexington Hotel, did he live in the hotel?
A. Yes, sir.

320 Q. Slept there?
A. Yes, sir.

Q. Did he have any nearer relations that you ever met except cousins?
A. No, sir.
Q. These cousins were in Newport News, were they?
A. Yes.

Q. Did you ever hear him speak of having a mother living?
A. I heard him speaking of his father, but I don't remember anything about his mother.
Q. So that the only members of his family, as I understand it, you ever heard him speaking about, were his father and one brother, is that right?
A. Yes.
Q. You don't know where they lived?
A. No, sir, I don't know where they lived.
Q. You don't know where Gilmore had come from to Newport News?
A. No, sir, I have no idea.
Q. After the collision, how did you come into the water, if you got there?
A. I jumped off into the water, I stayed on the ship until it got mighty near down and I had to jump down into the water.
Q. Did you see Gilmore jump, too?
A. Yes, sir, he was there before I was.
Q. You saw him jump into the water and then you jumped into the water—you didn't see him jump?
A. I saw him after he got into the water; whether he jumped or not, I don't know.
Q. You saw him in the water?
A. Yes, sir, I saw him in the water struggling.
Q. You didn't see him go in?
A. No, sir, I didn't see him go in.
Q. You never saw him get out?
A. No, sir, I didn't see him come out.
Q. You jumped into the water afterwards?
A. Yes.
Q. And you got pulled out of the water by a small boat?
A. Yes, sir.
321 Q. You think that small boat was from the vessel that sank you?
A. Oh, yes.
Q. And you were taken on board the other boat, weren't you?
A. Yes, sir.
Q. By the time you jumped into the water was it pretty light?
A. Yes, it was just beginning to get light.
Q. Could you see a considerable distance?
A. You couldn't see very far. It was just beginning to get light.
Q. Was the sun up?
A. No, sir, the sun wasn't up; I didn't see it. It was too dark to see it.

By Mr. FULLMAN:

Q. When you say that you got about $6 a week at the Lexington Hotel, did you mean that that included your tips or excluded the tips—what wages did the Hotel pay you a week?
A. $5 a week as wages.

Q. And when you say that you earned $6 altogether the other dollar was the average of the tips that you made?
A. Yes.

By Mr. HOUGH:

Q. I understand you have testified once that you thought you would make about $3 a week on tips and at another time that you made about a dollar; now, which is right?
A. You mean including the tips?
Q. Yes. How much do you think you would make a week at the Lexington Hotel?
A. Including tips, $6 a week. Some weeks we would make more than other weeks.
Q. Taking one week with another, your wages and tips together were worth about $6 a week?
A. Yes, sir.

322 NORRIS POYNER, being duly sworn as a witness on behalf of the above claim, testifies as follows:

Examined by Mr. FULLMAN:

Q. Where do you live?
A. Philadelphia.
Q. Where do you work?
A. At the Hotel Normandie, Thirty-sixth and Chestnut Streets.
Q. Were you a passenger on the last trip of the steamer *Saginaw?*
A. I was.
Q. Where did you go aboard the ship?
A. At Norfolk, Virginia.
Q. Do you know what day?
A. It was Monday, the 4th of May.
Q. What year?
A. 1903.
Q. Do you know one of the passengers there by the name of Alfred Gilmore?
A. Yes, sir; I remember he was at the wharf and also I saw him on the boat.
Q. When did you see him on the boat?
A. I saw him on there in the evening. That was on May 4th.
Q. What was the name of that boat, do you know?
A. Yes, sir, the steamer *Saginaw.*
Q. Who was with him?
A. His friend, David Roland, was with him.
Q. You saw them together that evening?
A. Yes, sir; they were together all the time.
Q. When did you next see Gilmore?
A. I saw him, I suppose, about half past nine o'clock, all of the time until half-past nine o'clock that night.
Q. I mean after he turned in?

A. I saw him the next morning just about, I guess, 5.15 that morning.

Q. Was that after the collision between the *Hamilton* and the *Saginaw?*

A. It was at the time it happened.

Q. What made you get out of bed that morning?

A. It was because the boat ran into us.

323 Q. You didn't get out of bed until after the collision?

A. No, sir.

Q. Then it was after the collision that you saw out on deck wasn't it?

A. Yes.

Q. When did you next see him,—did you see him again after that?

A. I saw him out in the water the next time, struggling in the water. He was trying to swim.

Q. Were you in the water, too?

A. Yes, sir.

Q. Who picked you up?

A. The steamer *Hamilton's* small boat picked me up.

Q. And they brought you back to the *Hamilton,* did they?

A. Yes, sir, they brought me to the *Hamilton.*

Q. Did they take all the survivors back to the *Hamilton?*

A. All they could find.

Q. Did you see Gilmore among those that they took back?

A. No, sir, he wasn't among them.

Q. And you never saw him again after that?

A. No, sir, I haven't seen him since.

Cross-examined by Mr. HOUGH:

Q. Had you ever known Gilmore before?

A. Only as a passenger.

Q. You never knew him before you both went on board the *Saginaw?*

A. No, sir.

Q. Had you ever known Roland before?

A. No, sir, I had not.

Q. You just made the acquaintance of both of them that evening before this accident happened, had you not?

A. Yes.

Q. What kind of a looking fellow was Gilmore?

A. He was kind of a light looking fellow, very intelligent looking. He was a very neat looking young man.

Q. How old should you judge he was?

A. I think he was just about 21 or 22 years old.

324 Q. How old were you then?

A. I am 26 years old now; then I was 23.

Q. Do you think that Gilmore was older or younger than you?

A. He looked younger than I was. Of course, I don't know anything about his age, and I can't say.

Q. You are sure he was a young man?

A. Yes; he looked to be 21 or 22 years old.

NEW YORK, *April 25th*, 1905.

In re Petition of OLD DOMINION S. S. Co.

In re Petition of CLYDE STEAMSHIP Co.

Met pursuant to adjournment.
Present: The Commissioner, Mr. Putnam, Mr. Everett, and Mr. Fullman.

Mr. PUTNAM: I offer in evidence release executed by R. B. Loughead, of Chester Penna., for $75.
The same is received in evidence and marked Loughead's Exhibit 1, April 25th, 1905.
I also offer in evidence Release by Stephen B. Kenney, of Windsor, N. C., as Administrator of Eliza Jones, for $1,000.
The same is received in evidence and marked Kenney's Exhibit 1, April 25th, 1905.
With regard to claims about which evidence has been taken, I understand that they have introduced all the evidence of Tunnell.
I introduce from the deposition of July 1st, 1903, all the
325 testimony not already put in, and the same as to his testimony not taken in Court on November 1st, 1904. I also introduce the deposition of James Jacobsen, taken June 11th, 1903, William Morris, taken July 1st, 1903, and Joseph H. Seltzer.
Case closed; briefs to be submitted on or before May 5th, 1905.

MAY 8, 1905.

Mr. Everett submits brief on behalf of Hawley and Belknap claims.
Mr. Putnam submits his brief on the assessment of damages and the exhibits. He also offers in evidence a release dated May 6th, 1905, signed by James Cooper, and states that the claim of James Coomer, has been settled, as shown by the release, covering loss of cash and personal effects and for personal injuries and expenses.
Release received in evidence and marked Petitioner's Exhibit 14, May 8, 1905.

In re Petition of OLD DOMINION S. S. Co.

In re Petition of CLYDE STEAMSHIP Co.

NEW YORK, *April 25th*, 1905.

Met pursuant to notice.
Present: The Commissioner, Mr. Putnam and Mr. Hough.

Mr. Putnam hands to the Commissioner in pursuance of the stipulation at page 4 of the minutes of the testimony before
326 the Commissioner the receipt of White, Williamson & Co. by Davis, Symmes & Schreiber, their proctors.
The same is received in evidence and marked Petitioner's Exhibit 15, May 11th, 1905.

Mr. Putnam also presents a release of S. Moscowitz & Co., dated April 5th, 1904.

The same is received in evidence and marked Petitioner's Exhibit 16, May 11th, 1905.

Mr. Putnam also presents a release of Eagle Skirt Company, signed by Max Schaffer and others, dated March 31st, 1904.

The same is received in evidence and marked Petitioner's Exhibit 17, May 11th, 1905.

It is stipulated between the proctors for the *Hamilton* and the proctors for the *Saginaw* that as shown by Petitioner's Exhibits 1, 2 and 3 of March 3d, 1905, all the cargo claims asserted in the proceeding have been settled by the Old Dominion Steamship Company or its underwriters for its account and that the total amount of such cargo claims as settled is the sum of.....$110,633.39

That the claims for loss of personal effects and injuries have been settled, as shown by Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and Kenney Exhibit 1, April 25, 1905, and Loughead Exhibit 1, April 25, 1905, and that the amount thereof is..... $9,679.06

Total amount paid by the Old Dominion Company $120,312.45

327 In *Hamilton-Saginaw*.

NEW YORK, *May* 22, 1905.

Present: The Commissioner.

The Commissioner states that he has received from Messrs. Convers and Kirlin, Proctors for Alvin L. Joseph, a certified copy of the Letters of Administration issued to Joseph and Goslee, Biddle & Ward and Wing, Putnam & Burlingham that the letters may be admitted in evidence and made a part of the record.

The Commissioner directs accordingly.

The Commissioner places upon the record also a letter from Messrs. Convers and Kirlin, Proctors for Capt. James H. Tunnell, under date of May 18, 1905, in which they state that the claim is withdrawn and requesting the Commissioner to enter upon the record a statement that Capt. Tunnell's claim is formally withdrawn by his Proctors.

328 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton*.

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Mary Swanson, Administratrix of the Estate of Peter Swanson, upon the following grounds:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That there is no sufficient proof that the person referred to in the claim was actually on board of the steamship *Saginaw* at the time of the collision mentioned therein.

Third. That it does not appear and it has not been shown that the person named in the said claim lost his life by the said collision.

Fourth. That it does not appear and it has not been shown to what extent the estate of the decedent has *has* sustained pecuniary damage by the facts set forth in the said claim.

329 *Fifth.* The petitioner further objects that this Honorable Court has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

WING, PUTNAM & BURLINGHAM,
Proctors for the Petitioner.

[Endorsed:] Objection to claim of Mary Swanson, Administratrix—Filed February 4, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton.*

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Joseph Lawson, as Administrator of the Estate of Edmund Page upon the following ground:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That there is no sufficient proof that the person referred to in the claim was actually on board of the steamship *Sag-*
330 *inaw* at the time of the collision mentioned therein.

Third. That it does not appear, and it has not been shown, that the person named in the said claim lost his life by the said collision.

Fourth. That it does not appear and it has not been shown to what extent the estate of the deceased has sustained pecuniary damage by the facts set forth in the said claim.

Fifth. The petitioner further objects that this Honorable Court has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

[Endorsed:] Objection to claim of Joseph Lawson, Administrator—filed February 4th, 1905.

331 United States District Court, Southern District Court of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton*.

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Primus Gilmore, Administrator of the estate of Alfred Gilmore, deceased, upon the following grounds:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That there is no sufficient proof that the person referred to in the claim was actually on board of the steamship *Saginaw* at the time of the collision mentioned therein.

Third. That it does not appear and it has not been shown that the person named in the said claim lost his life by the said collision.

Fourth. That it does not appear and it has not been shown to what extent the estate of the decedent has sustained pecuniary damage by the facts set forth in the said claim.

332 *Fifth.* The petitioner further objects that this Honorable Court has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

[Endorsed:] Objection to claim of Primus Gilmore, Administrator.—Filed February 4th, 1905.

United States District Court, Southern District Court of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton*.

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Sallie T. Morris, as Executrix of the estate of William Morris, upon the following grounds:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That there is no sufficient proof that the person
333 referred to in the claim was actually on board of the steamship *Saginaw* at the time of the collision mentioned therein.

Third. That it does not appear and it has not been shown that the person named in the said claim lost his life by the said collision.

Fourth. That it does not appear and it has not been shown to what extent the estate of the decedent has sustained pecuniary damage by the facts set forth in the said claim.

Fifth. The petitioner further objects that this Honorable Court

has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

[Endorsed:] Objection to claim of Sallie T. Morris, Executrix.—Filed February 4th, 1905.

334 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton*.

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Mary Anderson, as Administratrix of the Estate of Sarah Elam, upon the following grounds:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That there is no sufficient proof that the person referred to in the claim was actually on board of the steamship *Saginaw* at the time of the collision mentioned therein.

Third. That it does not appear and it has not been shown that the person named in the said claim lost her life by the said collision.

Fourth. That it does not appear and it has not been shown to what extent the estate of the decedent has sustained pecuniary damage by the facts set forth in the said claim.

Fifth. The petitioner further objects that this Honorable
335 Court has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

WING, PUTNAM & BURLINGHAM,
Proctors for the Petitioner.

[Endorsed:] Objection to claim of Mary Anderson, as Administratrix—filed February 4th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the *Hamilton*.

The petitioner above named, the Old Dominion Steamship Company, hereby objects to the claim filed by Alvin Lee Joseph, as Executor of the Estate of Edward S. Goslee, upon the following grounds:

First. That the said claim and each portion thereof are excessive and exorbitant in amount and are not proved.

Second. That it does not appear and it has not been shown that the person named in the said claim lost his life by the said collision.

336 *Third.* That it does not appear and it has not been shown to what extent the estate of the decedent has sustained pecuniary damages by the facts set forth in the said claim.

Fourth. The petitioner further objects that this Honorable Court has not jurisdiction to award any damages whatever by reason of the matters set forth in the said claim.

Fifth. That it has been shown by the evidence taken and adduced on the trial of this proceeding that the person mentioned in said claim was to blame for said collision, and therefore that his representatives are not entitled to maintain any claim herein.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

[Endorsed:] Objection to claim of Alvin Lee Joseph, Executor—filed February 4th, 1905.

337 United States District Court, Southern District of New York.

In the Matter of THE CLYDE STEAMSHIP COMPANY as Owner of the Steamship *Saginaw* for a Limitation of its Liability.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

Commissioner's Report.

Dated, June 6, 1905.

HENRY W. GOODRICH, Commissioner:

The interlocutory decree directed me:

(1) "To take proof as to the amount, validity and priority of all claims for property losses to which exceptions shall be filed as aforesaid, and to report upon the total damages sustained by the two colliding vessels, as well as by the loss and destruction of the cargo and effects upon the *Saginaw.*"

338 (2) "That as to such claims as are already filed to recover for personal injuries and for loss of life of the persons who may have perished by or in consequence of said collision, the Commissioner report the amount of damages in each case with all evidence taken, or introduced, before him, touching such claims so as to enable the Court thereafter to determine the amount of damages."

(3) "That such report also state the facts and amounts showing the proper ultimate apportionment and adjustment of all collision claims and liabilities, as between the two petitioners herein."

I.—All of the claims for loss of cargo have been compromised and settled and the total amount thereof is stipulated before me to be the sum of.....	$110,633.39
All of the claims for loss of personal effects, and all of the claims for personal injuries, including the claim for the death of Eliza Jones, S. B. Kenney, administrator, have been settled and the amount thereof has been stipulated before me in the sum of.....	9,679.06
Making a total of.....	$120,312.45

All of these amounts were paid by the Old Dominion Steamship Company or by the underwriters for its account.

One-half of that amount is chargeable against the Clyde Steamship Company.....	$60,156.22
In addition the Clyde Steamship Company should bear one-half of the damage to the steamship 339 *Hamilton*. The amount thereof, including demurrage, is stipulated at the sum of $11,083.08, one-half of which is.....	5,541.54
Making a total charge against the Clyde Steamship Company of	$65,697.76
Brought forward	$63,697.76
On the other hand, it is stipulated that the total loss of the steamer *Saginaw* is the sum of $90,000, with one-half of which the Clyde Steamship should be credited, namely	$45,000.00
Leaving a balance due the Old Dominion Company of	$20,697.76

Releases from various claimants, together with the statements and receipts of the adjustment and settlement of the cargo claims are in evidence before me giving in detail the names of the shippers, the values of their respective shipments, and the amount paid in settlement and adjustment of their claims.

The result of this adjustment is that there are left pending before me only the claims for loss of life.

The following are the death claims:

(1) Primus Gilmore, as administrator of Alfred Gilmore, deceased	$10,200
(2) Alvin Lee Joseph, as executor under the will of Edward S. Goslee, deceased.....	20,000
(3) Sallie T. Morris, as administratrix of William Morris, deceased	15,000
(4) Mary Swanson, as administratrix of Peter Swanson, deceased	12,000
(5) Mary Anderson, as administratrix of Sarah Elam, deceased	15,000

340 (6) Joseph Lawson, as administrator of Edmund Page, deceased 8,100
(7) Luther Hawley, as widower of Mary Hawley, deceased. 10,000
(8) Maurice G. Belknap, as administrator of Laura Hawley, deceased 10,000

In assessing damages, and in passing upon the question of contributory and imputed negligence, the law to be applied is the law of Delaware if the courts of that State have pronounced upon the question; if they have not, the federal law is to be applied.

It will be remembered that the various claimants are in this court *in invitum*. These are proceedings to limit liability and the court has issued an injunction against proceedings in any other forum, or by any other proceedings than the present. It is therefore manifestly just that the claimants should not be deprived of any benefits which they might have received, in case the law of Delaware is more favorable to them than the law of the Federal Courts; but on the other hand if there are any principles of law enunciated by the Delaware courts more favorable to the steamship than the law as announced in the Federal Courts, the ship may likewise claim the benefit of them.

That the law of Delaware applies is settled in the case of Northern Pacific Company against Babcock, 154 U. S. 190. In that case the contract of employment was made in Montana and the accident occurred in that State; the action was brought in Minnesota; there was a difference in the statutes of the two States as to the amount which the plaintiffs in such cases might recover. The court said, (page 197):

341 "The question which those assignments of errors present is, was the amount of damage to be controlled by the law of the place of employment and where the accident occurred, or by the law of the forum in which the suit was pending?"

And at page 199:

"We think there was no error in holding that right to recover was governed by the *lex loci*, and not by the *lex fori*."

In Slater *vs.* Mexican National Railroad Co., 194 U. S., 120, the court said at page 126, as follows:

"Therefore we may lay on one side as quite inadmissible the notion that the law of the place of the act may be resorted to so far as to show that the act was a tort, and then may be abandoned, leaving the consequences to be determined according to the accident of the place where the defendant may happen to be caught." * * *

And on page 127:

"As the cause of action relied upon is one which is supposed to have arisen in Mexico under Mexican laws, the place of the death and the domicile of the parties have no bearing upon the case."

In Railroad Co. *vs.* Babcock, *supra*, the court at page 197, quoted with approval from Herrick *vs.* Minneapolis & St. L. R. Co. 31 Minn. 11, the following:

"In such cases the law of the place where the right was acquired, or the liability was incurred, will govern as to the *right of action;*

while all that pertains merely to the *remedy* will be controlled
342 by the law of the State where the action is brought."

In the case of Boston and M. R. Co. *vs.* McDuffey, 79 Fed. Rep. 934, at page 937 the court held as follows:

"The question whether or not an injured servant shall have the right of action for damages against a negligent master, when such master's negligence has been committed through the instrumentality of another servant, *is one which deals with the right of action itself, not with the remedy.*"

See also Maher *vs.* Union Pacific, D. & G. R. R. Co., 106 Fed. Rep. 309, at page 310, where the court applied the law of the place where the collision of railway trains occurred, as settling the liability of the defendants to the plaintiffs for their negligence. See also Stewart *vs.* Baltimore & Ohio R. R. Co., 168 U. S., 445.

The cases of the Steamboat Company *vs.* Chase, 16 Wall. 522 and the City of Norfolk, 55 Fed. Rep. 98, cited in the brief for the steamship do not negative the conclusions above stated. The former case came up to the Supreme Court of the United States by writ of error to the Supreme Court of Rhode Island, in whose courts a right of action for death upon the tidal waters between Providence and Newport, within Rhode Island, sustained by the state courts, was likewise sustained by the *state courts, was likewise sustained by the* Supreme Court, the conclusion being that the right of action given by the state statute for such a death, does not interfere with the exclusive jurisdiction of the District Court conferred by the Constitution and the judiciary acts. While in the City of Norwalk, 55 Fed. Rep. 98, the court held that the state statute does not create a
343 *cause* of action but that it creates a new *right* and liability, and the court in that case held that the law of imputed negligence of the state applied so far as to defeat the right of the deceased to recover against his own ship.

The law of Delaware, in regard to the law of damages, is stated in the case of William *vs.* Walton & Whawn Co., 9 Houston, 322, as follows:

"If the jury shall find a verdict for the plaintiff, then if she is entitled to damages, they are to estimate the reasonable probabilities of the life of the deceased, and give the plaintiff such pecuniary damages, not only for past losses but for such prospective damages as a jury can find she has suffered or will suffer, as the direct consequences of the death of said deceased."

In Maxwell, administrator, *vs.* Wilmington Street Railway Company, 1 Marvel, 199, the court said, at page 208:

"The measure of damages is such a sum as the deceased would probably have earned in his business during life, and would have gone to his next of kin, taking into consideration the age of the deceased, his ability, disposition to labor, habits of living and expenditure."

In the case of Reed *vs.* Queen Anne's R. R. Co. 57 Atlantic Rep., 529, the court, at page 532, said:

"If you find for the plaintiff it should be for such a sum of money as will reasonably compensate her for any and all damages

that she has sustained or may hereafter sustain by reason of the death of her husband, basing your verdict upon the number of years the deceased would probably have lived had he not been so
344 killed. In measuring damages in this case you are not to be governed by what would probably have been the gross earnings or income of the deceased, but by what portion of the gross earnings or income the plaintiff would probably have received from the deceased as his wife, if he had lived."

In Cox *vs.* Wilmington S. R. Co., 53 Atlantic Rep., 569, the court said:

"If you find for the plaintiff it should be for such a sum of money as will reasonably compensate her for any and all damages that she has sustained or may hereafter sustain by reason of the death of her said husband; basing your verdict upon the number of years the deceased would probably have lived, and have given to her the benefits of his society and support as such husband."

In Croker *vs.* Pusey & Jones Co., 50 Atlantic Rep., 61, the court said:

"If you find for the plaintiff, it should be for such sum as, in your judgment, under the evidence in this cause, the deceased would probably have earned in his business during life and left as his estate, taking into consideration the age of the deceased, his ability and disposition to labor and habits of living and expenditures."

See also Parvis *v.* P. W. & B. R. R. Co., 17 Atl. Rep., 702; Wilcox, admr. *v.* W. C. Railway, 2 Pennewill, 157; Tully *v.* P. W. & B. R. R. Co., 50 Atl. Rep., 915; Neal *v.* W. & N. C. Elect. Ry. Co., 53 Atl. Rep., 338.

I do not find that the rule as stated in the courts of the
345 United States differs materially from the Delaware rule. See *The Oceanic*, 61 Fed. Rep., 339, at page 363; Lindstrom *vs.* The International Navigation Company, 117 Fed. Rep., 170, at page 175 (reversed on another point, 123 Fed. Rep., 475); *In re* Humboldt Lumber Manufacturers Association, 60 Fed. Rep., 428, page 444; Harkins *vs.* Pullman Palace Car Co., 52 Fed. Rep., 724; affirmed 55 Fed. Rep., 932; Ross *vs.* Texas & Pac. Railway Co., 44 Fed. Rep., 44; Nickerson *vs.* Bigelow, 62 Fed. Rep., 900; Cheatham *vs.* Red River Line, 56 Fed. Rep., 248; Boden *vs.* Demwolf, 56 Fed. Rep., 846; Ladd *vs.* Foster, 31 Fed. Rep., 827; Central Trust Co. *vs.* Wabash, &c., 34 Fed. Rep., 616; Whiton *vs.* Chicago, &c., 2 Bissell, 282; *O. L. Hallenbeck*, 119 Fed. Rep., 468; *The Elizabeth*, 114 Fed. Rep., 757; Voelker *vs.* C. M. St. P. R. R. Co., 116 Fed. Rep., 867; *The Dauntless*, 121 Fed. Rep., 420; Killian *vs.* Hyde, 63 Fed. Rep., 172; Middleton *vs.* Compagnie Transatlantique Co., 110 Fed. Rep., 1001; Memphis Consolidated Gas and Electric Co. *vs.* Letson, 135 Fed. Rep., 969.

Of the eight persons, claims for whose deaths are before me, Goslee and Swanson were white; Morris, Gilmore, Page, Mrs. Elam, Mrs. Hawley and Laura Hawley were colored. They were all upon the *Saginaw* and were drowned. Swanson, Gilmore, and Mrs. Hawley and her child were passengers; the other four were members of the

crew. In the cases of Morris and Swanson objection is made to the allowance of any amount upon the ground that each left a widow and that the action is brought by the personal representatives. The statute of Delaware (13 Del. Laws 1866-67, pages 28, 29, C. 31; Del. L. 1901, p. 500, C. 210) provides that "the widow or widower of such deceased person, or if there be no widow or widower,
346 the personal representatives may maintain" &c. The interlocutory decree, however, in this case directs me as follows:

(2) "That as to such claims as are already filed to recover for personal injuries and for loss of life of the persons who may have perished by or in consequence of said collision, the commissioner reports the amount of damage in each case, with all evidence taken or introduced before him touching such claims, so as to enable the court thereafter to determine the amount of damages."

In the Swanson case the claim as presented reads as follows: "The claimant, Mary Swanson, administratrix of the estate and widow of Peter Swanson, deceased, alleges as follows" and then recites that she is the widow of Swanson and also that letters of administration have been issued to her.

In the case of Morris, the claim is in the form of an affidavit by Sallie T. Morris which recites that she is the widow and executrix of William Morris, and that she claims her damages not reciting the capacity in which she asserts the claim. The court, by order entered May 27, 1905, permitted the filing of the claim, *nunc pro tunc,* in an amended form.

I am in considerable doubt as to whether I have the right, under the order of reference herein, to reject these claims for the reason stated by the proctors for the *Hamilton,* and hence, I have considered the amount of damages leaving the matter of the right of the claimants to assert their claims for consideration by the court.

All the claims for death were asserted against the *Hamilton;* the claims for the death of William Morris, Edward S. Goslee,
347 Mrs. Hawley and Laura Hawley were also asserted against the proceeds of the *Saginaw.*

The Claim of Primus Gilmore as Administrator, &c., of Alfred Gilmore.—Alfred Gilmore was 18 years old at the time of his death. He was a waiter in constant employment and received from $5.50 to $6 a week in addition to board and lodging. He was unmarried and left surviving him his father, Primus Gilmore, who files the claim as administrator, his mother and several sisters and brothers. He had contributed to some degree to the support of his father, who also received assistance from others of the children, and who was a farmer and teamster at Fayetteville, North Carolina. The father was 59 years of age and the children were from about 25 years of age to 5 years. Alfred Gilmore, according to the proof before me, was steady and industrious and of good habits, but not of a saving disposition. He sent to his father small sums of money amounting to perhaps $50 in one year. His expectation of life, according to the mortality tables, 20 Am. & Eng. Encyc. 885, was a little over 43 years. I think the sum of Three thousand five hundred dollars ($3,500) should be allowed upon this claim.

II. The Claim of Alvin Lee Joseph, as Executor under the Will of Edward S. Goslee, deceased.—Goslee was a man of -0 years of age and the first officer of the *Saginaw*. He was in vigorous health, a man of good habits, of thrifty disposition, having accumulated real estate and personal property of the value of $10,000 or $11,000. His wages were $67 per month, including an allowance for board. His expectation of life was 15 years.

348 The proctors for the *Hamilton* asked for the dismissal of this claim upon the grounds: 1st, that Goslee, claimant's testator, was negligent; and 2nd, on the ground that his estate cannot recover because of the negligence of Tunnell, master of the vessel, and of the other officers concerned in her navigation. I find as a fact that Goslee was not personally negligent, and that the only negligence was that of Tunnell, the master of the vessel; and inasmuch as the claim is asserted practically only against the *Hamilton,* the proceeds of the *Saginaw* being so small as to be neglible, I find as a matter of law that the defense is not available against the *Hamilton,* even if it could be raised in behalf of the *Saginaw.*

I find that the claim should be allowed in the sum of Seven thousand five hundred dollars ($7,500).

III. The Claim of Sallie T. Morris as Administratrix of William Morris, Deceased.—William Morris was steward on board the *Saginaw,* a position which he had held for some time. He was forty years of age and had been married a year and ten months before his death. His wages were $35 a month and his board and lodging on board the steamer for which the company made an allowance of $17 per month, making his earnings in reality $52 per month. His wife, shortly before his death, had opened a restaurant in Richmond, and Morris was accustomed regularly to send money to her; she testifies that he sent her $50 a month. He was industrious, sober and of good habits. He left no children. His expectation of life was twenty-eight years. I am of opinion that she should be allowed Four thousand five hundred dollars ($4,500).

349 IV. The Claim of Mary Swanson as Widow and Administratrix of Peter Swanson.—Swanson lived in Philadelphia and was a shoemaker by trade, but occasionally went to sea. He had been in hospital in Norfolk in consequence of an accident on the *Saginaw* some two months before he started to return by the same ship to Philadelphia. He came as a passenger. He was 42 years of age and his earnings were about $600 per year. His wife, and his son of 12 years of age, had been dependent upon him for support. He appears to have been a man of good health and of sober and industrious habits. His expectation of life was twenty-seven years. I think the claim should be allowed in the sum of Four thousand two hundred and fifty dollars ($4,250).

V. The Claim of Mary Anderson as Administratrix, &c., of Sarah Elam.—Sarah Elam was the Stewardess on the *Saginaw.* She was 53 years of age and a widow, and the administratrix is her daughter; there are two other daughters, both unmarried, the youngest of the three being twenty years old. Her wages were $10 per month, which with the allowance above stated, amount- to $27 per

month. The three children were more or less dependent upon her for support. She had been thrifty and had saved some money. Her expectation of life was nineteen years. I allow this claim in the sum of Two thousand five hundred dollars ($2,500).

VI. The Claim of Joseph Lawson as Administrator of the Estate of Edmund Page, Deceased.—Page was the first cook on the *Saginaw*, his earnings being from $500 to $600 per year; he had dependent upon him for support his mother, Lucretia Stokes, well along in years, who, since his death, has fared poorly. His age was
350 between 31 and 35 years, and his expectation of life was thirty-two years. He had been in the habit of sending his mother from $13 to $15 a month. He left also a sister and a brother. I allow this claim in the sum of Four thousand two hundred and fifty dollars ($4,250).

VII. The Claim of Luther Hawley as Widower of Mary Hawley, Deceased.—Mary Hawley was sixteen years of age at the time of her death. She was the wife of Luther Hawley, who was a laborer earning from $7 to $13 a week, and she took care of his housekeeping arrangements. She was healthy and vigorous, and her expectation of life was forty-five years. I think the claim should be allowed in the sum of Three thousand five hundred dollars ($3,500).

VIII. The claim of Maurice G. Belknap as Administrator of the Estate of Laura Hawley, Deceased.—Laura Hawley, was an infant in arms, only about a month old, but according to the testimony, was a healthy and vigorous child. Her expectation of life was about 36 years. I allow Seven hundred and fifty dollars ($750.) on this claim.

A tabular statement of the wages, occupations and amount allowed by me, is as follows:

Name.	Age.	Expectation.	Yearly Wages.	Occupation.	Amount.
Gilmore	18	43	$360	Waiter	$3,500
Goslee	60	15	924	Chief Officer	7,500
Morris	40	28	624	Chief Steward	4,500
Swanson	42	27	600	Shoemaker	4,250
Sarah Elam	53	19	324	Stewardess	2,500
Page	35	32	550	Cook	4,250
Mrs. Hawley	16	45	....	Wife of Luther Hawley.	3,500
Laura Hawley	1 mo.	36	....	Infant	750
Total					$30,750

351 One-half of this amount, namely $15,375, should be chargeable against the *Saginaw*, which, together with the amount of $20,697.76 due the Old Dominion Company as already stated, makes a balance due of $36,072.76.

I have not credited the amount of the proceeds of the *Saginaw* in this report in the thought that this amount, together with the apportionment of the costs, &c., should be a matter for the final decree.

All of which is respectfully submitted.

HENRY W. GOODRICH,
Commissioner.

[Endorsed:] Commissioner's Report filed—filed June 10th, 1905.

352 District Court of the United States, Southern District of New York.

In the Matter of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship *Saginaw* for Limitation of its Liability.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton* for Limitation of its Liability.

Exceptions to Commissioners' Report on Behalf of the Old Dominion Steamship Company.

The Old Dominion Steamship Company excepts to the Report in the above entitled proceeding, filed herein June 10, 1905, made by Henry W. Goodrich, Esq., a Commissioner appointed herein by an interlocutory decree entered the 31st of January 1905.

1st. For that the said Commissioner erred in applying or attempting to apply to this proceeding the assumed law of the State of Delaware in assessing these damages, and in regard to con-
353 tributory and imputed negligence, and in not applying the law as administered by the Courts of the United States.

2nd. For that the said Commissioner erred in holding that "in assessing damages and in passing upon the question of contributory and imputed negligence the law to be applied is the law of Delaware if the Courts of that State have pronounced upon the question."

3rd. For that the said Commissioner erred in allowing any damages to the claimant Mary Swanson, administratrix of Peter Swanson, deceased, and in not rejecting said claim, and in not holding that said claimant as administratrix is not entitled in this Court, either under the law of the State of Delaware, or under any other law whatsoever applicable to this proceeding, to recover any sum for the death of said decedent.

4th. For that the said Commissioner erred in allowing any damages whatever to Sallie T. Morris, executrix of William Morris, deceased, and in not holding that said claimant as administratrix is not entitled in this Court either under the law of the State of Delaware or under any other law whatever applicable to this proceeding to recover any amount whatever for the death of said decedent, and in not further holding and reporting that the amendment to the claim of said Sallie T. Morris, executrix as aforesaid, permitted by the order herein May 27th, 1905, did not change, vary or enlarge the right of said Sallie T. Morris, in any capacity whatsoever, to recover any sum whatever for the death of said William Morris, deceased.

354 5th. For that the said Commissioner erred in finding and allowing the sum of $3,500 to Primus Gilmore, as administrator of Alfred Gilmore, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same

are unreasonable and excessive in view of the employment of the deceased as a colored waiter earning $6 weekly (Ref. pp. 92, 157) and the fact that he was not of a thrifty disposition, but dressed "well;" was not engaged in a steady situation, but shifted from place to place (Stevens deposition, pp. 89, 90).

6th. That the assumed and estimated expectation of life of the deceased according to certain mortality tables, as adopted and followed by the said Commissioner, being over 43 years is not a just and accepted criterion of damages for such cases in the courts of the United States.

7th. For that the said Commissioner erred in finding and allowing the sum of $7,500 to Alvin Lee Joseph as executor under the will of Edward S. Goslee, deceased, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; especially as to the absence of evidence of the sums received from deceased by his sister, Maggie E. Goslee, who was alleged to be partially dependent on the deceased's earnings; also that said sum is excessive.

8th. For that the said Commissioner erred in finding that Goslee, the claimant's testator, was not personally negligent, inasmuch as the evidence before the Commissioner showed persistent violation of law in the navigation of the steamship *Saginaw* in running
355 at full speed for more than thirty miles, before the collision, in a dense fog (as already found by this court), during which time Goslee was in the pilothouse and directly in charge of, or in privity with, the navigation of said ship, as is shown by the first deposition of Captain Tunnell (pp. 231-235), also his examination in Court November 1st, 1904 (pp. 4, 5, 6 and 7), also by the deposition of Jacobsen (Trial record, p. 213).

9th. For that the said Commissioner also erred in finding that the negligence of the master of the vessel did not affect the claim of Goslee's estate, inasmuch as he considered that such claim is here asserted practically against the *Hamilton* only. In making this finding and conclusion the said Commissioner did not regard the principle that the *Hamilton's* owners are only liable for a moiety of what would otherwise be the recovery of the *Saginaw's* crew. Inasmuch as Goslee, if surviving, could not recover at all from the *Saginaw* (*The Osceola,* 189 U. S., 158, 175), his personal representative cannot enforce any greater right than could Goslee, had he survived. As any claim against the Clyde Steamship Company by Goslee's estate is therefore invalid and not enforceable, such claim against the *Hamilton* cannot be maintained for its full amount; but the Old Dominion Steamship Company, in any event, could only be made answerable for one-half of any such losses and damages otherwise recoverable herein.

10th. For that the said Commissioner also erred in assuming from certain mortality tables,, which were not proved, that Goslee had an expectation of life of 15 years, since such tables are
356 not regarded as a fair and accepted criterion of damages in the Courts of the United States.

11th. For that the said Commissioner erred in finding and allow-

ing the sum of $4,500 to the claimant Sallie T. Morris, as administratrix of William Morris, deceased, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive, in view of his employment, and the amount of his wages $35 a month with board (Testimony Amend, reference p. 125).

12th. For that the said Commissioner also erred in that the assumed and estimated expectation of life, according to certain mortality tables, as adopted and followed by the said Commissioner, being taken as 28 years, is not a just and accepted criterion of damages in the courts of the United States.

13th. For that the said Commissioner erred in awarding a full recovery to said Morris, although, as one of the crew of the *Saginaw*, his recovery could in no event exceed a moiety of his loss, as against this petitioner.

14th. For that the said Commissioner erred in allowing $4,250 to the claimant, Mary Swanson, as widow and administratrix of Peter Swanson, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive, in view of his impaired physical condition,
357 having been in the Norfolk Hospital (Bristow, p. 3; Swanson, p. 368) and whose last wages had been at the rate of $25 per month (Swanson, p. 368).

15th. For that the said Commissioner erred in that the assumed and estimated expectation of life, according to certain mortality tables, as adopted and followed by the said Commissioner, being taken as 27 years, is not a just and accepted criterion of damages in the courts of the United States.

16th. For that the said Commissioner erred in allowing the sum of $2,500 to the claimant Mary Anderson, as administratrix of Sarah Elam, stewardess, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive in view of her wages at the rate of $12.00 per month (Amend., p. 125), which she presumably spent, as it is not shown that she had ever saved any money (Anderson, pp. 75, 77).

17th. For that the said Commissioner erred in that the assumed and estimated expectation of life, according to certain mortality tables, as adopted and followed by the said Commissioner, and taken at 19 years, is not a just and accepted criterion of damages in the courts of the United States.

18th. For that the said Commissioner erred in awarding a full recovery to the estate of said Elam, a stewardess, although, as one of the crew of the *Saginaw* her recovery could in no event
358 exceed a moiety of her loss, as against this petitioner, the Old Dominion Steamship Company.

19th. For that the said Commissioner erred in allowing the sum of $4,250 to the claimant Joseph Lawson, as administrator of the

estate of Edmund Page, cook on the *Saginaw,* in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive, as appears from his wages being but $20 a month, with some extras from the steward, and his board (Lawson, p. 40).

20th. For that the said Commissioner erred in that the assumed and estimated expectation of life, according to certain mortality tables, as adopted and followed by the said Commissioner, and taken to be 32 years, is not a just and accepted criterion of damages in the courts of the United States.

21st. For that the said Commissioner also erred in not taking into account the advanced age of the mother of Edmund Page (the only person shown to have been dependent on him), which age was estimated to be between 60 and 70 years (Lawson's deposition, pp. 40, 41).

22nd. For that the said Commissioner erred in awarding a full recovery to the estate of said Page, although as cook and hence one of the crew of the Saginaw, his recovery could in no event exceed a moiety of his loss, as against this petitioner, the Old Dominion Steamship Company.

23rd. For that the said Commissioner erred in allowing
359 the claimant Luther Hawley, as widower of Mary Hawley, deceased, the sum of $3,500, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive, in view of the condition and earnings of the claimant and the prospects of future earnings and savings of a family with no furniture, savings, or property as admitted by the deposition of Luther Hawley (p. 25).

24th. For that the said Commissioner also erred in that he overlooked or did not give due weight to the admission of Luther Hawley that since the death of Mary Hawley he had remarried (Hawley deposition, p. 29).

25th. For that the said Commissioner also erred in that the expectation of life, according to certain mortality tables, as adopted and followed by the said Commissioner, and taken by him as 45 years, is not a just and accepted criterion of damages in the courts of the United States.

26th. For that the said Commissioner erred in allowing the claimant Maurice G. Belknap, as administrator of the infant Laura Hawley, the sum of $750, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; and in that the same are unreasonable and excessive, in case of an infant one month old (Hawley deposition, p. 17).

27th. For that the said Commissioner erred also in that the expectation of life, according to certain mortality tables, as
360 adopted and followed by the said Commissioner, and taken

by him in this instance as 36 years, is not a just and accepted criterion of damages in the courts of the United States.

Dated June 14th, 1905.

WING, PUTNAM & BURLINGHAM,
Proctors for the Old Dominion Steamship Company.

[Endorsed:] Exceptions to Commissioner's Report. Filed June 14, 1905.

Opinion of the Court Modifying Commissioner's Report.

ADAMS, *J.:*

These are exceptions to the commissioner's report made in consequence of the decision of this Court on the merits of the applications of the owners of the steamship *Hamilton* and *Saginaw* to limit their liability. See *In re* Clyde S. S. Co., etc., 134 Fed. Rept., 95.

The report is as follows:

"The interlocutory decree directed me:

'(1) To take proof as to the amount, validity and priority of all claims for property losses to which exceptions shall be filed as aforesaid, and to report upon the total damages sustained by the two colliding vessels, as well as by the loss and destruction of the cargo and effects upon the *Saginaw*.

(2) That as to such claims as are already filed to recover for personal injuries and for loss of life of the persons who may have perished by or in consequence of said collision, the Commissioner
361 report the amount of damages in each case with all evidence taken, or introduced, before him, touching such claims so as to enable the Court thereafter to determine the amount of damages.

(3) That such report state the facts and amounts showing the proper ultimate apportionment and adjustment of all collision claims and liabilities, as between the two petitioners herein.'

1. All of the claims for loss of cargo have been compromised and settled and the total amount thereof is stipulated before me to be the sum of.....	$110,633.39
All of the claims for loss of personal effects, and all of the claims for personal injuries, including the claim for the death of Eliza Jones, S. B. Kenney, administrator, have been settled and the amount thereof has been stipulated before me in the sum of.	9,679.06
making a total of.....	$120,312.45
All of these amounts were paid by the Old Dominion Steamship Company or by the underwriters for its account.	
One-half of that amount is chargeable against the Clyde Steamship Company	$60,156.22

In addition the Clyde Steamship Company should bear one-half of the damage to the steamship *Hamilton*. The amount thereof, including demurrage, is stipulated at the sum of $11,083.08, one-half of which is	5,541.54
making a total charge against the Clyde Steamship Company of	$65,697.76
On the other hand, it is stipulated that the total loss of the steamer *Saginaw* is the sum of $90,000,	
362 with one-half of which the Clyde Steamship should be credited, namely	45,000.00
leaving a balance due the Old Dominion Company of	$20,697.76

Releases from various claimants, together with the statements and receipts of the adjustment and settlement of the cargo claims are in evidence before me giving in detail the names of the shippers, the values of their respective shipments, and the amount paid in settlement and adjustment of their claims.

The result of this adjustment is that there are left pending before me only the claims for loss of life.

The following are the death claims:

(1) Primus Gilmore, as administrator of Alfred Gilmore, deceased	$10,200.
(2) Alvin Lee Joseph, as executor under the will of Edward S. Goslee, deceased	20,000.
(3) Sallie T. Morris, as administratrix of William Morris, deceased	15,000.
(4) Mary Swanson, as administratrix of Peter Swanson, deceased	12,000.
(5) Mary Anderson, as administratrix of Sarah Elam, deceased	15,000.
(6) Joseph Lawson, as administrator of Edmund Page, deceased	8,100.
(7) Luther Hawley, as widower of Mary Hawley, deceased	10,000.
(8) Maurice G. Belknap, as administrator of Laura Hawley, deceased	10,000.

In assessing damages, and in passing upon the question of contributory and imputed negligence, the law to be applied is the law of Delaware if the Courts of that State have pronounced upon the question; if they have not, the Federal law is to be applied.

363 It will be remembered that the various claimants are in this Court in *invitum*. These are proceedings to limit liability and the Court has issued an injunction against proceedings in any other forum, or by any other proceedings than the present. It is therefore manifestly just that the claimants should not be deprived of any benefits which they might have received, in case the

law of Delaware is more favorable to them than the law of the Federal Courts; but on the other hand if there are any principles of law enunciated by the Delaware Courts more favorable to the steamship than the law as announced in the Federal Courts, the ship may likewise claim the benefit of them.

That the law of Delaware applies is settled in the case of Northern Pacific Company against Babcock, 154 U. S., 190. In that case the contract of employment was made in Montana and the accident occurred in that State; the action was brought in Minnesota; there was a difference in the statutes of the two States as to the amount which the plaintiffs in such cases might recover. The Court said (page 197):

"The question which those assignments of errors present is, was the amount of damage to be controlled by the law of the place of employment and where the accident occurred, or by the law of the forum in which the suit was pending?"

And at page 199:

"We think there was no error in holding that the right to recover was governed by the *lex loci,* and not by the *lex fori.*"

In Slater *vs.* Mexican National Railroad Co., 194 U. S., 120, the court said at page 126, as follows:

"Therefore we may lay on one side as quite inadmissible
364 the notion that the law of the place of the act may be resorted to so far as to show that the act was a tort, and then may be abandoned, leaving the consequences to be determined according to the accident of the place where the defendant may happen to be caught." * * *

And on page 127:

"As the cause of action relied upon is one which is supposed to have arisen in Mexico under Mexican laws, the place of the death and the domicil of the parties have no bearing upon the case."

In Railroad Co. *vs.* Babcock, *supra,* the court at page 197, quoted with approval from Herrick *v.* Minneapolis & St. L. R. Co., 31 Minn., 11, the following:

"In such cases the law of the place where the right was acquired, or the liability was incurred, will govern as to the *right of action;* while all that pertains merely to the *remedy* will be controlled by the law of the State where the action is brought."

In the case of Boston and M. R. Co. *vs.* McDuffey, 79 Fed. Rep., 934, at page 937, the court held as follows:

"The question whether or not an injured servant shall have the right of action for damages against a negligent master, when such master's negligence has been committed through the instrumentality of another servant, *is one which deals with the right of action itself, not with the remedy.*"

See also Maher *vs.* Union Pacific, D. & G. R. R. Co., 106 Fed. Rep., 309, at page 310, where the court applied the law of the place where the collision of railway trains occurred, as settling the
365 liability of the defendants to the plaintiffs for their negligence. See also Stewart *vs.* Baltimore & Ohio R. R. Co., 168 U. S., 445.

The cases of the Steamboat Company *vs.* Chase, 16 Wall., 522, and City of Norwalk, 55 Fed. Rep., 98, cited in the brief for the Steamship do not negative the conclusions above stated. The former case came up to the Supreme Court of the United States by writ of error to the Supreme Court of Rhode Island, in whose courts a right of action for death upon the tidal waters between Providence and Newport, within Rhode Island, sustained by the state courts, was likewise sustained by the Supreme Court, the conclusion being that the right of action given by the state statute for such a death, does not interfere with the exclusive jurisdiction of the District Court conferred by the Constitution and the judiciary acts. While in the City of Norwalk, 55 Fed. Rep., 98, the court held that the state statute does not create a *cause* of action, but that it creates a new *right* and liability, and court in that case held that the law of imputed negligence of the state applied so far as to defeat the right of the deceased to recover against his own ship.

The law of Delaware, in regard to the law of damages, is stated in the case of Williams *vs.* Walton & Whawn Co., 9 Houston, 322, as follows:

"If the jury shall find a verdict for the plaintiff, then if she is entitled to damages, they are to estimate the reasonable probabilities of the life of the deceased, and give the plaintiff such pecuniary damages, not only for past losses but for such prospective damages as a jury can find she has suffered or will suffer, as the direct consequences of the death of said deceased."

In Maxwell, administrator, *vs.* Wilmington Street Railway
366 Company, 1 Marvel, 199, the court said, at page 208:

"The measure of damages is such a sum as the dec-ased would probably have earned in his business during life, and would have gone to his next of kin, taking into consideration the age of the deceased, his ability, disposition to labor, habits of living and expenditure."

In the case of Reed *vs.* Queen Anne's R. R. Co., 57 Atlantic Rep., 529, the court, at page 532, said:

"If you find for the plaintiff it should be for such a sum of money as will reasonably compensate her for any and all damages that she has sustained or may hereafter sustain by reason of the death of her said husband, basing your verdict upon the number of years the deceased would probably have lived had he not been so killed. In measuring damages in this case you are not to be governed by what would probably have been the gross earnings or income of the deceased, but by what portion of the gross earnings or income the plaintiff would probably have received from the deceased as his wife, if he had lived."

In Cox *vs.* Wilmington S. R. Co., 53 Atlantic Rep., the court said:

"If you find for the plaintiff it should be for such a sum of money as will reasonably compensate her for any and all damages that she has sustained or may hereafter sustain by reason of the death of her said husband; basing your verdict upon the number of

years the deceased would probably have lived, and have given to her the benefits of his society and support as such husband."

In Croker *vs.* Pusey & Jones Co., 50 Atlantic Rep., 61, the court said:

367 "If you find for the plaintiff, it should be for such sum as, in your judgment, under the evidence in this cause, the deceased would probably have earned in his business during life and left as his estate, taking into consideration the age of the deceased, his ability and disposition to labor and habits of living and expenditures."

See also Parvis *v.* P. W. & B. R. R. Co., 17 Atl. Rep., 702; Wilcox, admr. *v.* W. C. Railway, 2 Pennewill, 157; Tully *v.* P. W. & B. R. R. Co., 50 Atl. Rep., 95; Neal *v.* W. & N. C. Elect. Ry. Co., 53 Atl. Rep., 338.

I do not find that the rule as stated in the courts of the United States differs materially from the Delaware rule. See *The Oceanic,* 61 Fed. Rep., 339, at page 363; Lindstrom *vs.* The International Navigation Company, 117 Fed. Rep., 170, at page 175, (reversed on another point, 123 Fed. Rep., 475); *In re* Humboldt Lumber Manufacturers Association, 60 Fed. Rep., 428, page 444; Harkins *vs.* Pullman Palace Car Co., 52 Fed. Rep., 724; affirmed, 55 Fed. Rep., 932; Ross *vs.* Texas & Pac. Railway Co., 44 Fed. Rep., 44; Nickerson *vs.* Bigelow, 62 Fed. Rep., 900; Cheatham *vs.* Red River Line, 56 Fed., Rep., 248; Boden *vs.* Demwolf, 56 Fed. Rep., 346; Ladd *vs.* Foster, 31 Fed. Rep., 827; Central Trust Co. *vs.* Wabash &c., 34 Fed. Rep., 616; Whiton *vs.* Chicago &c., 2 Bissell, 282; O. L. Hallenbeck, 119 Fed. Rep., 468; *The Elizabeth,* 114 Fed. Rep., 757; Voelker *vs.* C. M. St. P. R. R. Co., 116 Fed. Rep., 867; *The Dauntless,* 121 Fed. Rep., 420; Killian *vs.* Hyde, 63 Fed. Rep., 172; Middleton *vs.* Compagnie Transatlantique Co., 110 Fed. Rep.,

368 1001; Memphis Consolidated Gas and Electric Co., *vs.* Letson, 135 Fed. Rep., 969.

Of the eight persons, claims for whose deaths are before me, Goslee and Swanson were white; Morris, Gilmore, Page, Mrs. Elam, Mrs. Hawley and Laura Hawley were colored. They were all upon the *Saginaw* and were drowned. Swanson, Gilmore, and Mrs. Hawley and her child were passengers; the other four were members of the crew. In the cases of Morris and Swanson objection is made to the allowance of any amount upon the ground that each left a widow and that the action is brought by the personal representatives. The Statute of Delaware (13 Del. Laws 1866-67, pages 28, 29, C. 31; 31 Del. L. 1901, p. 500, C. 210) provides that "the widow or widower of such deceased person, or if there be no widow or such deceased person, or if there be no widow or widower, the personal representatives may maintain" &c. The interlocutory decree, however, in this case directs me as follows:

"2. That as to such claims as are already filed to recover for personal injuries and for loss of life of the persons who may have perished by or in consequence of said collision, the commissioner reports; the amount of damage in each case, with all evidence taken or

introduced before him touching such claims, so as to enable the court thereafter to determine the amount of damages."

In the Swanson case the claim as presented reads as follows: "the claimant, Mary Swanson, administratrix of the estate and widow of Peter Swanson, deceased, alleges as follows" and then recites that she is the widow of Swanson and also that letters of administration have been issued to her.

369 In the case of Morris, the claim is in the form of an affidavit by Sallie T. Morris which recites that she is the widow and executrix of William Morris, and that she claims her damages not reciting the capacity in which she asserts the claim. The court, by order entered May 27, 1905, permitted the filing of the claim, *nunc pro tunc,* in an amended form.

I am in considerable doubt as to whether I have the right, under the order of reference herein, to reject these claims for the reason stated by the proctors for the *Hamilton,* and hence, I have considered the amount of damages leaving the matter of the right of the claimants to assert their claims for consideration by the court.

All the claims for the death were asserted against the *Hamilton;* the claims for the death of William Morris, Edward S. Goslee, Mrs. Hawley and Laura Hawley were also asserted against the proceeds of the *Saginaw.*

I. The Claim of Primus Gilmore as administrator &c. of Alfred Gilmore.—Alfred Gilmore was 18 years of age at the time of his death. He was a waiter in constant employment and received from $5.50 to $6. a week in addition to board and lodging. He was unmarried and left surviving him his father, Primus Gilmore, who files the claim as administrator, his mother and several sisters and brothers. He had contributed to some degree to the support of his father who also received assistance from others of the children, and who was a farmer and teamster at Fayetteville, North Carolina. The father was 59 years of age and the children were from about 25 years of age to 5 years. Alfred Gilmore, according to the proof before me, was steady and industrious and of good habits but

370 not of a saving disposition. He sent to his father small sums of money amounting to perhaps $50 in one year. His expectation of life, according to the mortality tables, 20 Am. & Eng. Encyc., 885, was a little over 43 years. I think the sum of Three thousand five hundred dollars ($3,500) should be allowed upon this claim.

II. The Claim of Alvin Lee Joseph as Executor under the Will of Edward S. Goslee, deceased.—*Goslee* was a man of 60 years of age and the first officer of the *Saginaw.* He was in vigorous health, a man of good habits, of thrifty disposition, having accumulated real estate and personal property of the v-lue of $10,000 or $11,000. His wages were $67 per month, including an allowance for board. His expectation of life was 15 years.

The proctors for the *Hamilton* asked for the dismissal of this claim upon the grounds: 1st, that Goslee, claimant's testator, was negligent; and 2nd on the ground that his estate cannot recover because of the negligence of Tunnell, master of the vessel and of the

other officers concerned in her navigation. I find as a fact that Goslee was not personally negligent and that the only negligence was that of Tunnell, the master of the vessel; and inasmuch as the claim is asserted practically only against the *Hamilton*, the proceeds of the *Saginaw* being so small as to be negligible, I find as a matter of law that the defense is not available against the *Hamilton*, even if it could be raised in behalf of the *Saginaw*.

I find that the claim should be allowed in the sum of Seven thousand five hundred dollars ($7,500).

III. The Claim of Sallie T. Morris as Administratrix of
371 William Morris, Deceased.—William Morris was the steward on board the *Saginaw*, a position which he had held for some time. He was forty years of age and had been married a year and ten months before his death. His wages were $35 a month and his board and lodging on board the steamer for which the company made an allowance of $17 per month, making his earnings in reality $52 per month. His wife, shortly before his death, had opened a restaurant in Richmond, and Morris was accustomed regularly to send money to her; she testifies that he sent her $50 a month. He was industrious, sober and of good habits. He left no children. His expectation of life was twenty-eight years. I am of opinion that she should be allowed Four thousand five hundred dollars ($4,500).

IV. The Claim of Mary Swanson as Widow and Administratrix of Peter Swanson.—Swanson lived in Philadelphia and was a shoemaker by trade, but occasionally went to sea. He had been in hospital in Norfolk in consequence of an accident on the *Saginaw* some two months before he started to return by the same ship to Philadelphia. He came as a passenger. He was 42 years of age and his earnings were about $600 per year. His wife, and his son of 12 years of age, had been dependent upon him for support. He appears to have been a man of good health and of sober and industrious habits. His expectation of life was twenty-seven years. I think the claim should be allowed in the sum of Four thousand two hundred and fifty dollars ($4,250).

V. The Claim of Mary Anderson as Administratrix, &c. of Sarah Elam.—Sarah Elam was the stewardess on the *Saginaw*.
372 She was 53 years of age and a widow, and the administratrix is her daughter; there are two other daughters, both unmarried, the youngest of the three being twenty years old. Her wages were $10 per month, which with the allowance above stated, amount to $27 per month. The three children were more or less dependent upon her for support. She had been thrifty and had saved some money. Her expectation of life was nineteen years. I allow this claim in the sum of Two thousand five hundred dollars ($2,500).

VI. The Claim of Joseph Lawson as Administrator of the Estate of Edmund Page, Deceased.—Page was the first cook on the *Saginaw*, his earnings being from $500 to $600 per year; he had dependent upon him for support his mother, Lucretia Stokes, well along in years, who, since his death, has fared poorly. His age was between 31 and 35 years, and his expectation of life was thirty-two years. He had been in the habit of sending his mother from $13

to $15 a month. He left also a sister and a brother. I allow this claim in the sum of Four thousand two hundred and fifty dollars ($4,250).

VII. The Claim of Luther Hawley as Widower of Mary Hawley, Deceased.—Mary Hawley was sixteen years of age at the time of her death. She was the wife of Luther Hawley, who was a laborer earning from $7 to $13 a week, and she took care of his housekeeping arrangements. She was healthy and vigorous, and her expectation of life was forty-five years. I think the claim should be allowed in the sum of Three thousand five hundred dollars ($3,500).

VIII. The Claim of Maurice G. Belknap as Administrator
373 of the Estate of Laura Hawley, Deceased.—Laura Hawley was an infant in arms, only about a month old, but according to the testimony, was a healthy and vigorous child. Her expectation of life was about 36 years. I allow Seven hundred and fifty dollars ($750) on this claim.

A tabular statement of the ages, expectations, yearly wages, occupations and amount allowed by me, is as follows:

Name.	Age.	Expectation.	Yearly Wages.	Occupation.	Amount.
Gilmore	18	43	$360	Waiter	$3,500
Goslee	60	15	924	Chief Officer	7,500
Morris	40	28	624	Chief Steward	4,500
Swanson	42	27	600	Shoemaker	4,250
Sarah Elam	53	19	324	Stewardess	2,500
Page	35	32	550	Cook	4,250
Mrs. Hawley	16	45	....	Wife of Luther Hawley.	3,500
Laura Hawley	1 mo.	36	....	Infant	750
Total					$30,750

One-half of this amount, namely $15,375, should be chargeable against the *Saginaw;* which, together with the amount of $20,697.76 due the Old Dominion Company as already stated, makes a balance due of $36,072.76.

I have not credited the amount of the proceeds of the *Saginaw* in this report in the thought that this amount, together with the apportionment of the costs, &c., should be a matter for the final decree.

The exceptions are 27 in number but the proctors for the exceptant, the Old Dominion Steamship Company, state in their brief that they raise four general questions, as follows:

"1st. The error of the Commissioner in following the law of Delaware, not only as to the liability of the petitioners, but even in the method of ascertainment of the amount of damages.

374 2nd. The error of the Commissioner in dealing with the claims of the crew of the *Saginaw* (*a*) as to the personal negligence of the mate Goslee, and (*b*) as to the right of any members of the crew to recover against the *Hamilton* more than 50 per cent. of the damages otherwise recoverable by them.

3d. Regarding the claims presented by administratrices, and not by widows.

4th. Generally in the assessment of damages following reported

verdicts of juries, based on mortality tables, and not according to Admiralty precedents."

1.

The argument for the exceptions in this connection is substantially that while the court may, under its ruling that the vessels were parts of the territory of Delaware, determine if an action lies and as to the point of time when a suit may be brought, its award should not be governed by the views of Delaware juries but should follow recognized precedents in the admiralty courts. As I read the decisions, they do not determine that the verdicts rendered by juries shall in any way be binding or influential upon the decision of this court in reaching the amounts which should be awarded as damages but merely that the measure of damages shall be ascertained according to the law of the place. The courts in admiralty must determine the amounts in practically the same way as juries would reach them, *i. e.*, follow the ordinary methods in assessing the damages which they would instruct juries to adopt if the cases were tried in that way, but the amounts found by juries in particular cases cannot be regarded in any way as precedents for other cases. It was recently said by the Circuit Court of Appeals for the Fifth Circuit, Quinette *v.* Bisso, 136 Fed. Rep., 825, 841:

375 "Administering a Louisiana statute as to a wrong occurring within its borders, involving its own citizens, we think we should be governed in the measure of damages by analogy to the decisions of its highest court under similar circumstances."

2.

It ap*e*pars that the mate Goslee was not personally negligent with respect to the speed of his vessel. That was regulated by the master, who was responsible for the general conduct of his ship and it would be anomalous to hold the chief officer personally liable for acts committed under the instructions of the master. The latter came to the vicinity of the wheel some time prior to the collision and although he was not there just before the contact, having gone forward to obtain a better view, nevertheless he was giving orders for the movements of his vessel up to the end.

As to the right of the representatives of any member of the *Saginaw's* crew to obtain against the *Hamilton* more than 50% of the damages otherwise recoverable, it appears that the decedents were not so identified with their vessel that they could be regarded as participating in her faults and for that reason be excluded from any part of a recovery. The commissioner's determination in this respect is apparently correct.

3.

The claims as originally presented were made by the libellants as administrators. Subsequently some of the parties, when apparently necessary, presented their claims as widows and amendments were allowed to that effect. It is objected that the amendments
376 were too late under the Delaware statutes, as they provide (29 Delaware Laws of 1897, Chap. 594, p. 712):

"SECTION 1. That from and after the passage of this act no action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of one year from the date upon which it is claimed that such alleged injuries were sustained."

Seemingly, the original libels were sufficient to properly present the claims to the court. No harm, at least, was done by the amendments. I think the rights of the parties have been preserved.

4.

This has been partly considered above and it only remains to take up the question of the use of mortality tables.

Such tables are very useful in insurance matters, but seem to afford little real aid in determining the duration of life in such cases as are now presented and I think the commissioner has erred in adopting them for the purpose of absolutely determining the probable duration of the lives of many of the persons, whose deaths have to be considered here. Judge Simonton has said in this connection, *The William Branfoot*, 48 Fed. Rept., 914, 917:

"Counsel for libellant press upon the consideration of the court tables, prepared by insurance agents, showing the expectancy of life at various ages,—35 years if libellant is 30, and 32 years if he is 35,—and ask that he be allowed the sum of his daily wages for this period. This would be securing for libellant compensation for a certain period when we are dealing with the most uncertain
377 thing in the world,—human life. I have no confidence in, and less respect for, these tables made up by insurance agents, in which, of course, large allowance must be made for heavy commissions, expenses, and profit."

And this is especially true where colored persons are concerned.

Mr. Hoffman in his "Race Traits and Tendencies of the American Negro" says (pp. 57, 58):

"The great difference in the expectation of life for the two races is brought out with scientific accuracy in the following life table, abstracted from the census of 1880. No official life tables have been compiled since that year."

Comparative Expectation of Life for White and Colored Persons in Four Southern Cities in 1880.[1]

Ages.	Washington, D. C. 1880.		Baltimore, Md. 1880.		Charleston, S. C. 1880.		New Orleans, La. 1880.	
	Whites. Years.	Col'd. Years.	Whites. Years.	Col'd. Years.	Whites. Years.	Col'd. Years.	Whites. Years.	Col'd. Years.
0.....	42.36	25.25	38.18	23.26	38.34	21.82	38.10	25.56
5.....	51.85	44.48	51.72	44.32	46.10	40.68	47.88	40.76
10.....	48.71	42.13	49.66	42.40	44.24	37.96	44.16	37.50
20.....	40.42	35.34	41.50	36.62	36.24	31.60	35.80	30.63
30.....	33.64	30.22	34.74	30.64	30.08	27.14	29.35	26.98
40.....	27.36	24.63	28.05	24.68	24.60	21.51	23.78	22.49
50.....	21.06	18.90	21.27	18.92	18.80	15.72	18.62	17.78
60.....	15.01	13.70	15.01	13.42	13.14	11.04	13.58	13.22
70.....	9.98	9.19	10.24	8.87	8.81	7.90	9.43	8.90
80.....	6.70	6.37	7.14	6.38	6.59	5.94	6.73	6.46

[1] Census of 1880, Vol. XII, pages 773–783.

This table shows the expectation of life at ten selected ages for both races, in representative southern cities, bringing out in a forcible way the difference in the vitality of the two races. In the District of Columbia a white person at the age of thirty, for instance, would have a chance of living about three and a half years longer than a colored person of the same age; in Baltimore about four years, and in New Orleans two and a half years. But this is an age at which the general mortality is very low for both races. At all the earlier ages the differences are of course much greater. The excessive mortality at the very early ages of course affects the mortality at the older ages of reducing the differences between the two races. For the periods of old age the expectation of life is almost the same for both races."

378 I have compared the figures given with those of the census and find them to have been correctly extracted.

Under such circumstances, it does not seem to have been proper for the commissioner to use the mortality tables to the extent he has. The foregoing consideration- lead me to modify his conclusions with respect to the claims as follows:

1. Primus Gilmore, as administrator of Alfred Gilmore.

The deceased was a young colored waiter on the *Saginaw*. The claimant was held to be entitled to $3,500.

I think in view of the fact that the deceased was earning but small wages, with board, and did not, nor was likely to contribute much to his father's support, that the amount allowed was excessive and that the sum of $2,000 will amply compensate the claimant for any loss that he may have suffered by the death.

2. Alvin L. Joseph, executor of Edward S. Goslee.

The deceased was a white man and the chief officer of the *Saginaw*. He was 60 years of age and earning $67 per month with board. The claimant was allowed $7,500. I think the commissioner ruled correctly as to the claimant being entitled to recover the full loss arising from the death, but in view of the decedent's age and limited earning capacity, I consider that the award should be reduced to $6,000.

3. Sallie T. Morris, as administratrix and widow of William Morris.

The deceased was a colored steward on the *Saginaw*, earning $35

per month and board worth $17 per month, making his earnings practically $52 per month. The claimant was allowed $4,500.
379 It is not probable that the deceased would have been able to send his wife much of his earnings. In any event, she was able to and did earn her own living, partially at least. I think the allowance should be reduced to $3,000.

4. Mary Swanson, as administratrix of Peter Swanson.

The deceased was 42 years of age. He was a shoemaker by trade earning about $600 per year. On this occasion he was making a trip on the *Saginaw* as a passenger. He had a wife and son, the latter, about 12 years of age, dependent upon him for support. The claimant was allowed $4,250. Barring consideration of the decedent's expectation of life as shown by the mortality tables and adopted by the commissioner, the deceased was not in sound physical condition, having been injured while working on the *Saginaw* as a sailor. It does not appear that he worked at his trade very steadily and in view of his impaired physical condition, I think the commissioner's award is excessive. It should be reduced to $2,750.

5. Mary Anderson, as administratrix of Sarah Elam.

The deceased was a colored stewardess on the *Saginaw*. She was 53 years of age and earned $10 per month with board. The latter was worth to her about $17 per month. She left three children who were more or less dependent upon her for support. The claimant was allowed $2,500. In view of the age of the deceased and her small earning capacity, I think the award was excessive and should be reduced to $1,500.

6. Joseph Lawson, as administrator of Edmund Page.

380 The deceased was the first cook on the *Saginaw*, earning $500 or $600 per year. His age was between 31 and 35 years. He left a mother and a brother and sister surviving him. He had been in the habit of sending his mother from $13 to $15 per month, but was irregular in doing so. She was between 60 and 70 years of age. An allowance of $4,250 was made. It seems that no one but his mother had any expectation of aid from him and in view of her advanced years and the small and irregular amounts that he contributed to her support, I think the award should be reduced to $3,000.

7. Luther Hawley, as widower of Mary Hawley.

The deceased was but 16 years of age. She was the wife of the claimant, a laborer earning from $7 to $13 per week. He very quickly married again. He had a child by the deceased born about the 1st of April, 1903. An allowance of $3,500 was made. The widower's loss was not great and the award seems to be excessive. It should be reduced to $2,000.

8. Maurice Belknap, as administrator of Laura Hawley.

The deceased was an infant about a month old but healthy and vigorous. The value of this life is exceedingly problematical. I think the award is excessive and it should be reduced to $400.

The death claims as allowed are as follows:

1. Primus Gilmore, as administrator of Alfred Gilmore, deceased	$2,000.
2. Alvin L. Joseph, as executor of Edward S. Goslee, deceased	6,000.
3. Sallie T. Morris, as administratrix and widow of William Morris, deceased	3,000.
4. Mary Swanson, as administratrix of Peter Swanson, deceased	2,750.
5. Mary Anderson, as administratrix of Sarah Elam, deceased	1,500.
6. Joseph Lawson, as administrator of Edmund Page, deceased	3,000.
7. Luther Hawley, as widower of Mary Hawley, deceased.	2,000.
8. Maurice G. Belknap, as administrator of Laura Hawley, deceased	400.
	$20,650.

381

The exceptions are overruled save as here indicated, and the report as modified will be confirmed.

August 2, 1905.

382 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the U. S. Court Room, in the City of New York, on the 10th day of August, 1905.

Present: Hon. George B. Adams, Judge.

In the Matter of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship *Saginaw*, for a Limitation of its Liability.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Libels and petitions having been filed herein by the above-named Steamship Companies to limit their respective liabilities as several owners of the Steamships *Saginaw* and *Hamilton*, which were in collision on May 5th, 1903, under the provisions of the Act of Congress entitled "An Act to Limit the Liability of Shipowners and for Other Purposes," passed March 3rd, 1851, and the several acts and statutes amendatory thereof and supplementary thereto, for the limitation of liability for the loss, destruction, damage and injury occasioned by, or resulting from, or in connection with said collision, and the subsequent sinking of the Steamship *Saginaw;*

383

And the said petitioners having also contested any and all liability resulting from or in connection with said disaster, independently of the limitation of liability so claimed as aforesaid; and monitions having been issued and published, followed by proofs of claims with

answers by the several parties claiming damage for loss, destruction, damage and injury, also for loss of life; and the said two proceedings having come on to be heard together; and the proofs having been adduced therein, and arguments having been duly made, and after due deliberation the Court having pronounced both vessels to blame for said collision, and having directed that the collision damages be apportioned, and having also held that the Court had jurisdiction to allow claims for loss of life, as appears from the written decision heretofore filed in these causes; and an interlocutory decree having been heretofore entered, referring it to Henry W. Goodrich, Esq., as Commissioner, to take proof as to the respective claims, and the report of said Commissioner having been duly filed, wherefrom it appears that all claims for loss of cargo have been compromised and settled for the sum of One hundred and ten thousand six hundred and thirty-three and 39/100 Dollars ($110,633.39), and that all of the claims for loss of personal effects and for personal injuries, and the claim for the death of Eliza Jones (represented by
384 Stephen B. Kinney, as administrator) have been settled for the sum of Nine thousand six hundred and seventy-nine and 6/100 Dollars ($9,679.06); and it also appearing therefrom that the damages sustained by the Steamship *Hamilton*, including demurrage, amount to the sum of Eleven thousand eighty-three and 8/100 Dollars ($11,083.08); and that the value of the Steamship *Saginaw*, which became a total loss owing to said collision, was the sum of Ninety thousand Dollars ($90,000); and said Commissioner having reported that the only claims outstanding are death claims, by Primus Gilmore, as administrator of Alfred Gilmore, deceased; by Alvin L. Joseph, as executor of Edward S. Goslee, deceased; by Sallie T. Morris, as administratrix of William Morris, deceased; by Mary Swanson, as administratrix and widow of Peter Swanson, deceased; by Mary Anderson, as administratrix of Sarah Elam, deceased; by Joseph Lawson, as administrator of Edmund Page, deceased; by Luther Hawley, as widower of Mary Hawley, deceased; and by Maurice G. Belknap, as administrator of Laura Hawley, deceased; and the Court having permitted amendments of the claims of said Sallie T. Morris and Mary Swanson;

And the said Commissioner having reported the damages of Primus Gilmore, as administrator aforesaid, to be the sum of Three thousand five hundred Dollars ($3,500); of Alvin L. Joseph, as executor as aforesaid, to be the sum of Seven thousand five hundred Dollars ($7,500); of Sallie T. Morris, as administratrix as aforesaid, to be the sum of Four thousand five hundred Dollars ($4,500); of Mary Swanson, as widow and administratrix of Peter Swanson as aforesaid, to be the sum of Four thousand two hundred and
385 fifty Dollars ($4,250); of Mary Anderson, as administratrix of Sarah Elam, to be the sum of Two thousand five hundred Dollars ($2,500); of Joseph Lawson, as administrator of Edmund Page, to be the sum of Four thousand two hundred and fifty Dollars ($4,250); of Luther Hawley, as widower of Mary Hawley, to be the sum of Three thousand five hundred Dollars ($3,500); of Maurice G. Belknap, as administrator of Laura Hawley, deceased, to be the

sum of Seven hundred and fifty Dollars ($750); and exceptions having been filed to said report by the Old Dominion Steamship Company, and said exceptions having come on to be heard, and due deliberation having been had, and the Court having rendered a decision on said exceptions, modifying said report and making an award to Primus Gilmore, as administrator as aforesaid, of Two thousand Dollars ($2,000); to Alvin L. Joseph, as executor as aforesaid, of Six thousand Dollars ($6,000); to Sallie T. Morris, as administratrix as aforesaid, of Three thousand Dollars ($3,000); to Mary Swanson, as administratrix as aforesaid, of Two thousand seven hundred and fifty Dollars ($2,750); to Mary Anderson, as administratrix as aforesaid, of One thousand five hundred Dollars ($1,500); to Joseph Lawson, as administrator of Edmund Page as aforesaid, of Three thousand Dollars ($3,000); to Luther Hawley, widower of Mary Hawley, of Two thousand Dollars ($2,000); and to Maurice G. Belknap, as administrator as aforesaid, of Four hundred Dollars ($400); and the Court having overruled all the other exceptions to said report;

Now on motion of Robinson, Biddle & Ward, proctors for the Clyde Steamship Company, and Wing, Putnam & Burlingham, proctors for the Old Dominion Steamship Company, it is

386 Ordered, adjudged and decreed, that the said petitioners, the Clyde Steamship Company and the Old Dominion Steamship Company, are not entitled to exemption from all liability as claimed by them in their petitions, but that each of them is entitled to a limitation of its liability as provided in said act of Congress, passed March 3rd, 1851, and the various acts and statutes amendatory thereof and supplementary thereto; and it is further

Ordered, adjudged and decreed, that the default of all persons sustaining damage for any loss, destruction, damage, or injury occasioned by, or resulting from, or in connection with, the collision of said steamships and the sinking of said steamship *Saginaw* on the 5th day of May, 1903, who have not heretofore presented claims, be, and the same hereby is, entered herein; and that all claims which have not been heretofore presented be, and they hereby are, forever barred; and it is further

Ordered, adjudged and decreed, that the petitioner, the Clyde Steamship Company, recover against the fund in Court representing its interest in the value of the steamship *Saginaw*, the taxable disbursements of an unopposed proceeding for limitation of liability; and it is further

Ordered, adjudged and decreed, that Primus Gilmore, as administrator of Alfred Gilmore, deceased, recover against the balance of the fund in Court and against the petitioner the Old Dominion Steamship Company, the sum of two thousand Dollars ($2,000); that Alvin L. Joseph, as executor of Edward S. Goslee, deceased, recover the sum of Six thousand Dollars

387 ($6,000); that Sallie T. Morris, as administratrix of William Morris, deceased, recover the sum of Three thousand Dollars ($3,000); that Mary Swanson, as administratrix and widow of Peter Swanson, deceased, recover the sum of Two thousand seven hundred

and fifty Dollars ($2,750); that Mary Anderson, as administratrix of Sarah Elam, deceased, recover the sum of One thousand five hundred Dollars ($1,500); that Joseph Lawson, as administrator of Edmund Page, deceased, recover the sum of Three thousand Dollars ($3,000); that Luther Hawley, as widower of Mary Hawley, deceased, recover the sum of Two thousand Dollars ($2,000); and that Maurice G. Belknap, as administrator of Laura Hawley, deceased, recover the sum of Four hundred Dollars ($400); amounting in the aggregate to Twenty thousand six hundred and fifty Dollars ($20,650); and that said claimants have execution against said Old Dominion Steamship Company for any balance due them after applying said fund to payment of their claims.

And it appearing that the damages of the Clyde Steamship Company for the loss of the Steamship *Saginaw* amount to Ninety thousand Dollars ($90,000), and that the damages sustained by the steamship *Hamilton* amount to Five thousand five hundred and forty-one and 54/100 Dollars ($5,541.54), and that the claims for loss of cargo, personal effects, &c., above referred to, amounting to One hundred and twenty thousand three hundred and twelve and 45/100 Dollars ($120,312.45), have been paid by the petitioner, the Old Dominion Steamship Company, and that but for the limitation of liability herein granted to the Clyde Steamship Company, the Old Dominion Steamship Company would be entitled to recover
388 against it on apportionment of damages between them, including the awards for loss of life, a balance amounting to Twenty-eight thousand two hundred and fifty-one and 79/100 Dollars ($28,251.79), it is

Ordered, adjudged and decreed, that the Clyde Steamship Company recover nothing for the loss of the steamship *Saginaw* and its damages arising therefrom; and it is further

Ordered, adjudged and decreed that said Primus Gilmore, as administrator of Alfred Gilmore, deceased, said Alvin L. Joseph, as administrator of Edward S. Goslee, deceased, said Sallie T. Morris, as administratrix of William Morris, deceased, said Mary Swanson, as widow and administratrix of Peter Swanson, deceased, said Mary Anderson, as administratrix of Sarah Elam, deceased, said Joseph Lawson, as administrator of Edmund Page, deceased, said Luther Hawley, as widower of Mary Hawley, deceased, and said Maurice G. Belknap, as administrator of Laura Hawley, deceased, their several agents, attorneys, proctors and counsel, refrain from the further prosecution of any actions or proceedings taken by them against either of these petitioners or against the steamship *Hamilton*, to recover for the losses and injuries aforesaid; and it is further

Ordered, adjudged and decreed that the said Clyde Steamship Company, its agents, attorneys, proctors and counsel refrain from the further prosecution of any actions or proceedings against the Old Dominion Steamship Company or against the steamship
389 *Hamilton*, to recover for the losses and damages by said Clyde Steamship Company sustained as aforesaid; and it is further

Ordered, that all other persons whomsoever claiming, or who may hereafter claim, for any loss, destruction, damage, or injury, oc-

casioned by said collision be, and the same hereby are, perpetually restrained and enjoined from bringing or instituting, or further prosecuting any suit or suits or proceedings whatever upon any cause of action whatsoever against the Clyde Steamship Company and the Old Dominion Steamship Company and the steamship *Hamilton* for any loss, damage or injury, done, suffered or occasioned, by reason of the loss and disaster caused by the collision between said steamships as aforesaid; and it is further

Ordered, that unless this decree be satisfied or an appeal be taken from this decree within the time limited by law and the rules and practice of this Court, the stipulators for costs and value on the part of the Steamship *Hamilton* will cause the engagements of their stipulations to be performed or show cause why execution should not issue against their goods, chattels and credits to enforce satisfaction hereof; and it is further

Ordered, that this decree be served within the Southern District of New York in the usual manner, and within any district or districts of the United States other than the Southern District of New York by the United States Marshal for such other district or districts respectively, by delivering a copy of such original decree and exhibiting a certified copy thereof to the party or person to be served.

It further appearing that the petitioner, the Old Dominion
390 Steamship Company, has filed a stipulation for value herein for the sum of Three hundred and eighteen thousand Dollars ($318,000), and its liability now being reduced to the sum awarded hereunder, and counsel for the Clyde Steamship Company not opposing, it is

Ordered, that the liability of the petitioner, the Old Dominion Steamship Company, on said stipulation for value, and the liability of the American Surety Company thereon, be, and the same hereby is, reduced to the sum of Thirty-five thousand Dollars ($35,000); and it is further

Ordered, that Hunt, Hill & Betts, as proctors for Swanson and Lawson, and Convers & Kirlin, as proctors for Anderson, Joseph and Morris, each recover herein one bill of costs to be taxed, Convers & Kirlin to be allowed one docket fee for each claimant answering separately.

GEORGE B. ADAMS, *U. S. D. J.*

[Endorsed:] Final Decree—Entered August 10th, 1905.

391 District Court of the United States for the Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

GENTLEMEN: Please take notice, that the petitioner herein, the Old Dominion Steamship Company hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final

decree entered herein on August 10th, 1904. The appellant desires to review only the following questions:

The action of the Court in sustaining claims against this petitioner on behalf of certain persons alleged to have been members of the crew and passengers on the *Saginaw* for damages by death from collision on the high seas.

The findings, conclusions and orders of the Court, regarding such claims, including the overruling of petitioner's exceptions to the report of Commissioner Goodrich herein.

Also as to the several sums adjudged by the Court to the various claimants for loss of life, amounting in the aggregate to $20,650.

Dated New York, August 19th, 1905.

WING, PUTNAM & BURLINGHAM,
Proctors for Petitioner.

392

To Thomas Alexander, Esq.,
Clerk.
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Company.
Messrs. Convers & Kirlin,
Proctors for Anderson, Joseph and Morris.
Messrs. Hunt, Hill & Betts,
Proctors for Swanson and Lawson.
A. Leo Everett, Esq.,
Proctor for Hawley and Belknap.
Arthur L. Fullman, Esq.,
Proctor for Gilmore, Administrator.

[Endorsed:] Petitioner's Notice of Appeal—Filed August 19th, 1905.

District Court of the United States, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton* for a Limitation of Liability.

The petitioner above named having appealed from the
393 final decree in these proceedings to the United States Circuit Court of Appeals for the Second Circuit, hereby assigns error in the said decree and proceedings of the District Court as follows:

1. In that said Court erred in holding that claims for death of passengers and crew of the Steamship *Saginaw* could be maintained against this petitioner in this proceeding.

2. That, as there is no element of contract, and the claims against the *Hamilton* and against this petitioner, are for a maritime tort committed upon the high seas, the Court erred in holding that the local Statute of the State of Delaware gave to such claimants a remedy for loss of life in the Admiralty.

3. In that the Court also erred in not sustaining the petitioner's exceptions to the allowance of and recovery for Alvin Lee Joseph, as Executor of Edward L. Goslee, chief mate of the *Saginaw,* on the ground of his individual fault in the navigation of that vessel, and in holding that said decedent was free from personal negligence and without complicity in the faults of the navigation of the steamer *Saginaw.*

4. In that the Court erred also in not sustaining the petitioner's other exceptions to the allowance of any recovery on behalf of said claimant—being the exceptions to the report of the Commissioner, numbered seventh and ninth.

5. For that the Court erred in sustaining claims on behalf of the crew of the *Saginaw* for the full amounts thereof, instead of allowing only a moiety of such claims, as against the Steamship *Hamilton,* and this petitioner, the owner thereof.

6. In that the Court erred in not sustaining the exceptions
394 taken by this petitioner to the allowance *ance* of any recovery to Primus Gilmore, as administrator of Alfred Gilmore, a passenger on the *Saginaw,* being the exception to the report of the Commissioner numbered fifth.

7. In that the Court erred in not sustaining the exceptions taken by this petition to the allowance of any recovery to Sallie T. Morris as administratrix and widow of William Morris, deceased, a colored steward on the *Saginaw,* being exceptions to the report of the Commissioner numbered fourth, eleventh, and thirteenth.

8. In that the Court erred in its allowance of an amendment of the claim of Sallie T. Morris, as administratrix and widow of William Morris, deceased, by its order entered herein on the 27th day of May, 1905, and its subsequent ruling sustaining said claim.

9. In that the Court erred in not sustaining the exceptions taken by the petitioner to the allowance of any recovery to Mary Swanson, as administratrix and widow of Peter Swanson, a passenger upon the *Saginaw,* being exceptions to the report of the Commissioner numbered third and fourteenth.

10. In that the Court erred in not sustaining the exceptions taken by the petitioner to the allowance of any recovery to Mary Anderson as administratrix of Sarah Elam, a stewardess on the *Saginaw,* being exceptions to the report of the Commissioner numbered sixteenth and eighteenth.

11. In that the Court erred in not sustaining the exceptions taken by this petitioner to the allowance of any recovery to Joseph Lawson, as administrator of Edmund Page, a cook on the *Sag-*
395 *inaw,* being exceptions to the report of the Commissioner numbered nineteenth, twenty-first, and twenty-second.

12. In that the Court erred in not sustaining in full the exceptions taken by this petitioner to the allowance of any recovery to Luther Hawley, as widower of Mary Hawley, deceased, a passenger on the *Saginaw,* being exception to the report of the Commissioner numbered twenty-third.

13. In that the Court erred in not sustaining the exceptions taken by this petitioner to the allowance of any recovery to Maurice Bel-

knap as administrator of Laura Hawley, an infant passenger on the *Saginaw*, being the exception to the report of the Commissioner numbered twenty-sixth.

14. In that the Court erred in its allowance of an amendment of the claim of Mary Swanson as administratrix of Peter Swanson, by its order of July 18, 1905, and its subsequent ruling sustaining said claim.

Dated, September 16th, 1905.

WING, PUTNAM & BURLINGHAM,
Proctors for the Old Dominion Steamship Company, Petitioner.

[Endorsed:] Petitioner's Assignment of Error. Filed September 16th, 1905.

396 District Court of the United States for the Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

SIR: Please take notice that the claimant herein, Primus Gilmore, as Administrator of the Estate of Alfred Gilmore, Deceased, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein on August 10th, 1905. The Appellant desires to review only the action of the Court in reducing the award by the Commissioner Goodrich to the claimant herein, Primus Gilmore, as Administrator of the Estate of Alfred Gilmore, Deceased, and the findings, conclusions and orders of the Court, modifying said Commissioner's report in so far as it pertains to the claim of the claimant herein.

Dated, September 13th, 1905.

ARTHUR L. FULLMAN,
Proctor for Claimant, Primus Gilmore, as Administrator, etc.

397

To Thomas Alexander, Esq.,
Clerk.
Messrs. Wing, Putnam & Burlingham,
Proctors for the Old Dominion Steamship Co.
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Co.
Messrs. Convers & Kirlin,
Proctors for Anderson, Joseph & Morris.
Messrs. Hunt, Hill & Betts,
Proctors for Swanson & Lawson.
A. Leo Everett, Esq.,
Proctor for Hawley & Belknap.

[Endorsed:] Notice of Appeal of claimant Primus Gilmore—filed September 13th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

The claimant in the above entitled matter, Primus Gilmore, as Administrator of the Estate of Alfred Gilmore, Deceased, having appealed from the final decree in these proceedings duly
398 entered in this Court on the 10th day of August, 1905, to the United States Circuit Court of Appeals for the Second Circuit, hereby assigns error in the said decree and proceedings of the District Court as follows:

First. In that said Court erred in sustaining the petitioner's exception to the allowance of the Commissioner in the sum of Three Thousand Five Hundred Dollars ($3,500) to the claimant aforesaid as damages for the death of said Alfred Gilmore and in reducing the damages allowed on said claim to the sum of Two Thousand Dollars.

ARTHUR L. FULLMAN,
Proctor for Claimant, Primus Gilmore, as Administrator, etc., 302 Broadway, N. Y. City.

To Thomas Alexander, Esq.,
Clerk.
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Co.
Messrs. Conve[illegible] Kirlin,
Proctors for Anderson, Joseph & Morris.
A. Leo. Everett, Esq.,
Proctor for Hawley & Belknap.
Messrs. Hunt, Hill & Betts,
Proctors for Swanson & Lawson.
Messrs. Wing, Putnam & Burlingham,
Proctors for Petitioner.

[Endorsed:] Assignments of error of claimant Primus Gilmore—filed September 26th, 1905.

399 District Court of the United States for the Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

SIRS: Please take notice that the claimants, Mary Swanson and Joseph Lawson, hereby appeal to the United States Circuit Court of Appeals, for the second Circuit, from the final decree entered herein on August 10, 1904. The Appellants desire to review only the following questions:

The action of the Court in sustaining the exception of the petitioner, the Old Dominion Steamship Company, to the report of Commissioner Goodrich, allowing the claimants $4,250 for the loss of life of Peter Swanson and Edwin Page, respectively, and in reducing said awards to $2,750 and $3,000 respectively.

Dated, New York, September 13, 1905.

HUNT, HILL & BETTS,
Proctors for Claimants,
Mary Swanson and Joseph Lawson.

400

To Thomas Alexander, Esq.,
Clerk.
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Co.
Messrs. Convers & Kirlin,
Proctors for Anderson, Joseph & Morris.
Messrs. Wing, Putnam & Burlingham,
Attorneys for Petitioner.
A. Leo Everett, Esq.,
Proctor for Hawley & Belknap.
Arthur L. Fullman, Esq.,
Proctor for Gilmore, Administrator.

[Endorsed:] Notice of appeal of Claimants Mary Swanson and Joseph Lawson—filed September 20th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for a Limitation of its Liability.

The claimants in the above entitled matter, Mary Swanson and Joseph Lawson, having appealed from the final decree in
401 these proceedings, duly entered in this Court on the tenth day of August, nineteen hundred and five, to the United States Circuit Court of Appeals for the Second Circuit, hereby assign error in the said decree and proceedings of the District Court as follows:—

First. In that said Court erred in sustaining the petitioner's exception to the allowance by the Commissioner of the sum of four thousand two hundred and fifty ($4,250) dollars on the claim of Mary Swanson aforesaid, on account of the death of Peter Swanson, and in reducing the damages allowed on said claim to the sum of two thousand seven hundred and fifty dollars.

Second. In that the Court erred in sustaining the petitioner's exception to the allowance by the Commissioner of the sum of four thousand two hundred and fifty ($4,250) dollars on the claim of Joseph Lawson aforesaid, on account of the death of Edmund Page,

and in reducing the damages allowed on said claim to the sum of three thousand ($3,000) dollars.

HUNT, HILL & BETTS,
Proctors for Claimants,
Mary Swanson and Joseph Lawson.

To Thomas Alexander, Esq.,
Clerk,
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Company,
Messrs. Convers & Kirlin,
Proctors for Anderson, Joseph and Morris,
Messrs. Wing, Putnam & Burlingham,
Attorneys for Petitioner,
A. Leo Everett, Esq.,
Proctor for Hawley, and Belknap.
Arthur L. Fullman, Esq.,
Proctor for Gilmore, Administrator.

402 [Endorsed:] Assignments of Error of Claimants Mary Swanson and Joseph Lawson.—Filed September 20th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton,* for Limitation of Liability.

SIRS: Please take notice that Mary Anderson, claimant herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from such parts of the final decree entered herein on August 10, 1905, as sustained the petitioner's exception to the commissioner's report, giving damages to the said claimant, as personal representative of Sarah Elam, deceased, in the sum of $2,500, and modified the same by reducing the said damages to the sum of $1,500, and that the said claimant desires to review by this appeal only the question of the amount of damages to be awarded to her.

New York, September 22nd, 1905.

Yours &c.,
CONVERS & KIRLIN,
Proctors for Claimant Sarah Elam.

403

To Thomas Alexander, Esq., Clerk;
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Company;
Messrs. Hunt, Hill & Betts,
Proctors for Swanson & Lawson;
Messrs. Wing, Putnam & Burlingham,
Proctors for the Petitioner;
A. Leo Everett, Esq.,
Proctor for Hawley & Belknapp;
Arthur L. Fullman, Esq.,
Proctor for Gilmore.

[Endorsed:] Notice of Appeal of Claimant Mary Anderson.—Filed September 30th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Assignments of Error.

Mary Anderson, claimant herein, having appealed from the final decree in this proceeding entered in the office of the clerk
404 of this court on the 10th day of August, 1905, to the United States Circuit Court of Appeals for the Second Circuit, hereby assigns error to the said decree and the proceedings of the District Court herein as follows:

1. In that the District Court erred in sustaining the petitioner's exceptions to the allowance by the commissioner to the above named claimant of the sum of $2,500 on account of the death of Sarah Elam, and in reducing the damages found for the above named claimant by the commissioner to the sum of $1,500.

2. In that the court erred in allowing as damages to the above named claimant on account of the death of Sarah Elam no more than $1,500 and refused to award the sum of $2,500 or such other reasonable sum in excess of $1,500 as would constitute a just award.

CONVERS & KIRLIN,
Proctors for Claimant Mary Anderson.

[Endorsed:] Assignments of Error of Claimant, Mary Anderson.—Filed September 30th, 1905.

405 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Notice of Appeal.

SIRS: Please take notice that Sallie T. Morris, claimant herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from such parts of the final decree entered herein on August 10, 1905, as sustained the petitioner's exception to the commissioner's report, giving damages to the said claimant, as personal representative of William Morris, deceased, in the sum of $4,500, and modified the same by reducing the said damages to the sum of $3,000, and that the said claimant desires to review by this

appeal only the question of the amount of damages to be awarded to her.

New York, September 22nd, 1905.

Yours, &c., CONVERS & KIRLIN,
Proctors for Claimant Sallie T. Morris.

To Thomas Alexander, Esq.,
Clerk;
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Company;

406

Messrs. Hunt, Hill & Betts,
Proctors for Swansea & Lawson;
Messrs. Wing, Putnam & Burlingham ,
Proctors for the Petitioner;
A. Leo Everett, Esq.,
Proctor for Hawley & Belknapp;
Arthur L. Fullman, Esq.,
Proctor for Gilmore.

[Endorsed:] Notice of Appeal of Claimant, Sallie T. Morris.—Filed September 30th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Assignments of Error.

Sallie T. Morris, claimant herein, having appealed from the final decree in this proceeding entered in the office of the Clerk of this Court on the 10th day of August, 1905, to the United States Circuit Court of Appeals for the Second Circuit, hereby assigns error

407 to the said decree and the proceedings of the District Court herein as follows:

1. In that the District Court erred in sustaining the petitioner's exceptions to the allowance by the commissioner to the above named claimant of the sum of $4,500 on account of the death of William Morris, and in reducing the damages found for the above named claimant by the commissioner to the sum of $3,000.

2. In that the court erred in allowing as damages to the above named claimant on account of the death of William Morris no more than $3,000, and refused to award the sum of $4,500 or such other reasonable sum in excess of $3,000 as would constitute a just award.

CONVERS & KIRLIN,
Proctors for Claimant Sallie T. Morris.

[Endorsed:] Assignments of error of claimant Sallie T. Morris, filed September 30th, 1905.

408 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Notice of Appeal.

SIRS: Please take notice that Alvin Lee Joseph and Maggie E. Goslee, claimants herein, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from such parts of the final decree entered herein on August 10, 1905, as sustained the petitioner's exception to the commissioner's report, giving damages to the said claimants, as personal representatives of Edward S. Goslee deceased, in the sum of $7,500, and modified the same by reducing the said damages to the sum of $6,000, and that the said claimants desire to review by this appeal only the question of the amount of damages to be awarded to them.

New York, September 22nd, 1905.

CONVERS & KIRLIN,
Proctors for Claimants Alvin Lee Joseph and Maggie E. Goslee.

To Thomas Alexander, Esq., Clerk.
Messrs. Robinson, Biddle & Ward,
Proctors for the Clyde Steamship Company.

409

Messrs. Hunt, Hill & Betts,
Proctors for Swansea and Lawson.
Messrs. Wing, Putnam & Burlingham,
Proctors for the Petitioner.
A. Lee Everett, Esq.,
Proctor for Hawley & Belknapp.
Arthur L. Fullman, Esq.,
Proctor for Gilmore.

[Endorsed:] Notice of Appeal of claimants Alvin Lee Joseph and Maggie E. Goslee—filed September 30th, 1905.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton*, for a Limitation of its Liability.

Assignments of Error.

Alvin Lee Joseph and Maggie E. Goslee, claimants herein, having appealed from the final decree in this proceeding entered in the

office of the Clerk of this Court on the 10th day of August, 1905, to the United States Circuit Court of Appeals for the Second Circuit, hereby assign error to the said decree and the proceedings
410 of the District Court herein as follows:

1. In that the District Court erred in sustaining the petitioner's exceptions to the allowance by the commissioner to the above named claimants of the sum of $7,500 on account of the death of Edward S. Goslee, and in reducing the damages found for the above named claimants by the commissioner to the sum of $6,000.

2. In that the court erred in allowing as damages to the above named claimants on account of the death of Edward S. Goslee no more than $6,000, and refused to award the sum of $7,500, or such other reasonable sum in excess of $6,000 as would constitute a just award.

CONVERS & KIRLIN,
Proctors for Claimants Alvin Lee Joseph and Maggie E. Goslee.

[Endorsed:] Assignments of error of claimants Alvin Lee Joseph and Maggie E. Goslee, filed September 30th, 1905.

411 United States District Court, Southern District of New York.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY for Limitation of Liability as Owner of the Steamship *Hamilton*.

Stipulation as to Record on Appeal.

It is hereby stipulated that the testimony on the merits taken on behalf of the Old Dominion Steamship Company, the testimony on the appraisal of the value of the steamship Hamilton and the certified copies of letters of administration issued to Joseph Lawson and Mary Swanson offered on the reference herein, may be omitted—it being agreed that said Joseph Lawson and Mary Swanson have been duly appointed administrator and administratrix respectively as stated—and that the foregoing papers shall constitute the record on appeal herein.

Dated New York, December 20th, 1905.

HUNT, HILL & BETTS,
Proctors for Lawson and Swanson.
ARTHUR L. FULLMAN,
Proctor for Gilmore.
ALEC EVERETT,
Proctor for Hawley and Belknap.
WING, PUTNAM & BURLINGHAM,
Proctors for Old Dominion Steamship Company, Petitioner.

412 The proctors for Morris, Anderson, Joseph and Goslee claim that the testimony of Stokely Warrington was not before the commissioner, and that accordingly it has not proper place in the record on appeal and should not be considered by the Court of Appeals on the hearing of the appeals with regard to any of said claims.

They sign the foregoing stipulation without prejudice to their contention and reserving their right to object in the Appellate Court to the consideration of Warrington's testimony in connection with the appeals relative to the claims of Morris, Anderson, Joseph and Goslee.

CONVERS & KIRLIN,
Proctors for Claimants Morris, Anderson, Joseph and Goslee.

413 UNITED STATES OF AMERICA,
Southern District of New York, ss:

In the Matter of the Petition of OLD DOMINION STEAMSHIP COMPANY as Owner of the Steamship *Hamilton* for Limitation of its Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY as Owner of the Steamship *Saginaw* for Limitation of its Liability.

I, Thomas Alexander, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 16th day of January, in the year of our Lord one thousand nine hundred and six and of the Independence of the said United States the one hundred and thirtieth.

[SEAL.] THOS. ALEXANDER, *Clerk.*

414 At a Stated Term of the United States Circuit Court of Appeals, for the Second Circuit, held at the Court rooms in the Post Office Building, Borough of Manhattan, New York City on the 14th day of February, 1906.

Present: Hon. Wm. J. Wallace, Hon. E. H. Lacombe and Hon. Wm. K. Townsend, Judges.

In the Matter of THE OLD DOMINION STEAMSHIP COMPANY, as Owners of the Steamship *Hamilton,* for a Limitation of Liability, etc.

The record on appeal in the above matter having been duly certified by the Clerk of the United States District Court, for the South-

ern District of New York, to the Clerk of this Court, and on the consent of the proctors for all the parties to said appeal, and the further consent of the proctor for the claimants Hawley and Belknap,

Now, on motion of Hunt, Hill & Betts, proctors for claimants Swanson and Lawson, it is

Ordered, that the appeals of the claimants Luther Hawley, and Maurice G. Belknap, as administrator of the goods, etc., of
415 Laura Hawley, deceased, herein from the final decree entered herein on August 10, 1905, be and the same hereby are dismissed, without costs, and it is

Further ordered and directed that the claim of said Luther Hawley, at page 79, the order allowing the claim of Luther Hawley, at page 81; the claim of Maurice G. Belknap, at page 82; the order allowing the claim of Maurice G. Belknap, at page 85; the depositions on reference of Luther Hawley, at page 338; William Brown, at page 353, Joseph Lawson, at page 357, and Judson Sivills, at page 387, taken on behalf of the said Hawley and Belknap claims, and the objection to the claim of Luther Hawley, at page 436; the objection to the claim of Maurice G. Belknap, at page 440; notice of appeal, at page 510, and assignments of error of said claimants Hawley and Belknap, at page 511 of said record, respectively as certified, be and hereby are omitted from the printed record on appeal, in the above entitled matter.

E. H. LACOMBE.

We, the undersigned, waive notice and consent to the entry of the above entitled order.

Dated, N. Y., Feb'y 8, 1906.

HUNT, HILL & BETTS,
Proctors for Claimants-Appellants Swanson and Lawson.
ARTHUR L. FULLMAN,
Proctor for Claimant-Appellant Gilmore.
ALEC. EVERETT,
Proctor for Claimants-Appellants Hawley and Belknap.
CONVERS & KIRTEN,
Proctors for Claimants-Appellants Goslee, Anderson and Morris.
WING, PUTNAM & BURLINGHAM,
Proctors for the Old Dominion Steamship Company, Petitioner Appellant.

416 I hereby consent to the entry of the above order dismissing the appeal of the claimants Hawley and Belknap, and waive notice of the same.

Dated, Feb'y 8, 1906.

ALEC EVERETT,
Procotor for Claimants-Appellants Hawley and Belknap.

417 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship *Hamilton,* for Limitation of its Liability.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY, as Owner of the Steamship *Saginaw,* for Limitation of its Liability.

Before Lacombe, Townsend and Coxe, Circuit Judges.

On appeal and cross appeal from a decree of the District Court for the Southern District of New York, granting the petitions of the Old Dominion Steamship Company, owner of the steamship *Hamilton,* and of the Clyde Steamship Company, owner of the steamship *Saginaw,* for a limitation of their liability for damages arising out of a collision between said vessels in a dense fog, as a result of which the *Saginaw* sank, causing loss of life, injury to persons and damage to cargo. The District Court held both vessels in fault for running at excessive speed in a fog.

Both vessels were owned by corporations created under the laws of Delaware and, as that state permits a recovery for loss of life, the District Court held that the claimants, representing the passengers and members of the crew who were drowned by the sinking of the Saginaw, were entitled to recover in the admiralty.

418 The opinion of the district judge, stating all the salient facts and citing the leading authorities bearing upon the questions debated, is reported in 134 Fed. Rep., 95.

A reference to fix the amount of damages was ordered but before the hearing by the commissioner all claims except those for loss of life were compromised and settled, and since the report one of these claims has been settled and withdrawn.

The commissioner, after a careful and painstaking examination of the facts and law, sustained the claims and fixed the amount of damages. Exceptions being filed, the District Court reduced the award of damages in each instance and, as so modified, confirmed the report. The opinion of the district judge setting out in full the report of Commissioner Goodrich is reported in 139 Fed. Rep., 906.

The following table shows the names of the deceased persons, the amount of the claims as filed and the amounts allowed respectively by the commissioner and the court.

Name.	Claim.	Commissioner.	Court.
Gilmore, passenger	$10,200	$3,500	$2,000
Goslee, Chief Officer	20,000	7,500	6,000
Morris, Chief Steward	15,000	4,500	3,000
Swanson, Passenger	12,000	4,250	2,750
Sarah Elam, Stewardess	15,000	2,500	1,500
Page, Cook	8,100	4,250	3,000

The questions presented by this appeal are

First. Does the Delaware statute apply to a claim for death on the high seas arising purely from tort?

Second. Can the representatives of the deceased members of the crew of the *Saginaw* recover their claims in full against the *Hamilton?*

419 *Third.* Had the court discretion to permit an amendment changing the capacity in which the claimants sued?

Fourth. Shall the awards made by the court be increased or reduced?

Harrington Putnam and Henry E. Mattison for the Old Dominion Steamship Company, appellant.

J. Parker Kirlin, Howard M. Long and John M. Woolsey, for claimants Goslee, Morris and Elam.

Arthur L. Fullman, for claimant Gilmore.

George W. Betts, Jr., for claimants Swanson and Lawson.

COXE, *J.:*

The three opinions, which have already been delivered in the course of this litigation, so fully and clearly state the facts and the law that little can be said by this court which is not a repetition of what appears in the reports.

In International Nav. Co. *v.* Lindstrom, 123 Fed. Rep., 475, this court decided that the sovereignty of a state extends to the vessels of the state upon the high seas, and if the law of the state permits a recovery for damages occasioned by a tortious act the law is as applicable to said vessels on the high seas as when actually within the boundaries of the state.

In the recent case of La Bourgogne, 139 Fed. Rep., 433, 439, we had occasion to reaffirm this doctrine as to death claims growing out of a collision in a fog on the high seas, the Bourgogne being sunk with great loss of life. The law of France permits a recovery in such circumstances and, in a proceeding to limit the liability of the owner, we held that the French law extended to and operated upon the Bourgogne in mid ocean.

We are informed that the Supreme Court has recently granted a certiorari in the Bourgogne case and, in view of the similarity
420 of the questions involved, it is not improbable, should a petition for a writ be filed, that a similar course may be taken in the case at bar. We see no impropriety in saying that such a result would be gratifying to us.

The facts in hand, of course, are not identical with those in the cases cited, but we are of the opinion that they cannot be successfully distinguished because of these differences.

The right of action provided by the Delaware statute is not founded on contract but on tort. "Whenever death shall be occasioned by unlawful violence or negligence" the personal representatives may maintain a suit in every case where the decedent could have maintained it had the injuries not resulted in death. Both vessels belonged to Delaware and those on board, whether pas-

sengers or members of the crew, were, in contemplation of law, within the territory of that state.

Assume that the Hamilton had negligently run into and sunk the Saginaw in the harbor of Wilmington, Delaware, causing the death of the persons in question, can there be a doubt that the claimants here would have a right of action at common law against the Old Dominion Company under the statute of that state? It would be no defense to such an action to show that the owner of the Saginaw was also negligent. One of two joint tortfeasors may not defend an action against himself by showing that the other wrongdoer was equally responsible. (Little *v.* Hackett, 116 U. S., 366.)

We do not see, either, how the question of negligence of a fellow servant could arise in such an action. The crew of the Saginaw were not fellow servants with the crew of the Hamilton and the persons who were drowned cannot be considered as fellow servants with the master of the Saginaw who, so far as that ship is concerned,
421 was the only person at fault for her excessive speed. No case with which we are familiar has gone to the extent of holding that the captain of a vessel is a fellow servant with the cook, the stewardess and the other inferior members of the crew. A better illustration of the doctrine of *alter ego* can hardly be imagined. Goslee, the chief officer, was not negligent; what he did was under the direction of the master and it would be a dangerous doctrine to hold a subordinate guilty of fault for obeying the orders of his superior.

But assuming that the rule as to the negligence of a co-servant can be invoked where the action is against another vessel, it would seem that the common law rule that the negligence of a co-servant does not defeat the action unless such negligence is the sole cause of the disaster is also applicable. No matter how much such negligence may contribute the defendant is not relieved if he himself be at fault.

Grand Trunk Co. *v.* Cummings, 106 U. S., 700.

Were this action against the Saginaw, of course, a different rule would apply as to the members of the crew, but it is doubted whether the maritime law based upon the ancient codes is applicable to the case at bar.

The Osceola, 189 U. S., 158.

There is no pretense that any one of the deceased persons was negligent and the finding that both vessels "were to blame" has been accepted by all. This is enough. We cannot doubt that had suits been brought for these deaths in the courts of Delaware the plaintiffs would have succeeded. By the action of the petitioners they are enjoined from prosecuting their claims in the home forum and are compelled to present them here.

Every consideration based on equity and natural justice impels us to hold that it was not the purpose of the limited liability
422 act to enable vessel owners to force claimants into the admiralty, and thus avoid claims which are valid and enforce-

able at common law. The intent was to limit the liability, not to destroy it.

It is true that no contractual relation existed between the claimants' intestates and the Old Dominion Company or the Hamilton, but we see no reason, based on sound logic, why a passenger of the Hamilton should be permitted to recover for her negligence and a similar right be denied to the passengers of the Saginaw injured by the identical negligence.

As to members of the crew, although their legal status differs in many respects from that of the passengers, we are unable to perceive how any valid distinction can be drawn as to their contractual relations to the ship which would permit the passengers to maintain an action against an outside vessel and deny that right to the crew. There is here no conflict of law as the statute invoked applies equally well to both vessels.

The claimants, representing innocent third parties in no way responsible for the collision either directly or by imputation, are entitled to recover the full amount of their damages. The fact that both ships were negligent does not change the rule, as the fault of the Saginaw cannot be imputed to persons who were wholly free from blame.

The Atlas, 93 U. S., 302; *The Juniata, Id.*, 337.

The claims of Sallie T. Morris and Mary Swanson were proper in the form in which they were originally filed. The objection is that the Delaware statute gives a right of action to the widow and that these claims were filed not by the widow but by the administratrix and that an amendment permitting the claim to be filed in the name of the widow presented a new cause of action which was barred by the Delaware statute of limitations.

423 In the Morris case the opening statement of the verified claim is:

"I reside at 2415 East Main Street, Richmond, Virginia, and am the widow and executrix of William Morris."

In the Swanson case the opening statement is:

"The claimant, Mary Swanson, administratrix of the estate and widow of Peter Swanson, deceased, alleges," etc.

Both claims state all the facts necessary to constitute a good cause of action.

Grant that in each case the claimant might have rested with the allegation that she was the widow of the drowned person, the subsequent statement that she was also executrix was absolutely immaterial and might with perfect propriety have been disregarded as surplusage. It was merely *descriptio personæ* and was as innocuous as the statement "I reside at 2415 East Main Street." Where a pleading alleges two representative capacities, in one of which the claim may be successfully prosecuted, we know of no rule of construction which requires the court to select the other and thus defeat the claim *in limine*. The court would have been justified in disregarding the unnecessary averments, interpreting the claims as filed by the claimants in their capacity as widows, but for greater caution an amendment was permitted in each instance. That such an

amendment was within the discretion of the court there can be no doubt.

The Minnetonka (decided May 22, 1906).

As before stated all the facts were before the court showing that the claimants were both widows and administratrices and the amendment allowing them to say that they claimed as widows permitted no new cause of action, created no surprise and required no additional proof. Such amendments are being constantly granted and particularly so in the admiralty where the practice is much
424 more liberal in this regard than in the courts of common law.

We have examined the awards made by the court with greater care than would ordinarily be required because both parties are dissatisfied. We are convinced that the amounts allowed by the District Court are fair and conservative and we see no reason for disturbing them.

We do not deem it necessary to pass upon all the questions presented upon this branch of the case or to express our approval or disapproval of all the reasons advanced by the commissioner and the judge in support of their respective findings; it suffices to say that upon the facts proved we are of the opinion that the amounts allowed by the final decree do substantial justice to the claimants.

The decree is affirmed with interest but without costs in this court.

425 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. In the Matter of The Petition of the Old Dominion Steamship Company, etc. In the Matter of The Petition of the Clyde Steamship Company, etc. (Copy.) Decision. Coxe, J. United States Circuit Court of Appeals, Second Circuit. Filed Jun. 22, 1906. William Parkin, Clerk.

426 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 2nd day of July one thousand nine hundred and six.

Present: Hon. E. Henry Lacombe, Hon. William K. Townsend, Hon. Alfred C. Coxe, Circuit Judges.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship Hamilton, for Limitation of Liability, Petitioner-Appellant; PRIMUS GILMORE ET AL., Claimants-Appellants.

In the Matter of the Petition of THE CLYDE STEAMSHIP COMPANY as Owner of the Steamship Saginaw for Limitation of Liability.

Appeals from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with interest but without costs.

A. C. C. It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

427 Endorsed: United States Circuit Court of Appeals, Second Circuit. *Re* Old Dominion SS. Co. *vs.* ——. Order for Mandate. United States Circuit Court of Appeals Second Circuit. Filed Jul- 7, 1906 William Parkin, Clerk.

428 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 427 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Old Dominion S. S. Co. & Clyde S. S. Co. for limitation of liability as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 9th day of July in the year of our Lord One Thousand Nine Hundred and Six and of the Independence of the said United States the One Hundred and thirty-first.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

429 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit between The Old Dominion Steamship Company, owner of the Steamship "Hamilton" and Primus Gilmore, Administrator of the estate of Alfred Gilmore, deceased, *et al.*, on appeal and cross-appeal, which suit was removed into the said Circuit Court of Appeals by virtue of appeals from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby com-
430 mand you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23d day of October, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

431 [Endorsed:] File No. 20,315. Supreme Court of the United States. No. 350, October Term, 1906. The Old Dominion Steamship Co., owner, &c., *vs.* Primus Gilmore, Adm'r, &c., *et al.* Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 8, 1906. William Parkin, Clerk.

432 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of the Petition of THE OLD DOMINION STEAMSHIP COMPANY, as Owner of the Steamship Hamilton, for Limitation of Liability.

It is hereby stipulated that the certified copy of the transcript of the record in the United States Circuit Court of Appeals for the Second Circuit filed herein on application for the writ of certiorari herein and now on file in the office of the Clerk of the Supreme Court of the United States be taken as a return to the writ of certiorari issued by the Supreme Court of the United States and that the Clerk of the Circuit Court of Appeals for the Second Circuit may attach this stipulation to the writ as his return thereto.

Dated New York November 2nd, 1906.

CONVERS & KIRLIN,
HOWARD M. LONG,
Proctors for Joseph, Goslee, Morris and Anderson.
HUNT, HILL & BETTS,
Proctors for Swanson.
ARTHUR L. FULLMAN,
Proctor for Gilmore.
WING, PUTNAM & BURLINGHAM,
Proctors for Old Dominion Steamship Company, Petitioner.

Endorsed: United States Circuit Court of Appeals Second Circuit. In the Matter of the Petition of the Old Dominion Steamship Company, as owner of the steamship Hamilton, for limitation of liability. Stipulation. Wing, Putnam & Burlingham, proctors for petitioners, 27 William Street, Borough of Manhattan, New York City. United States Circuit Court of Appeals Second Circuit. Filed Nov. 8, 1906. William Parkin, Clerk.

433 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the Clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, November 8, 1906.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

434 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. In the Matter of the Old Dominion S. S. Co. Return to Writ of Certiorari. 1.70.
[Endorsed:] 350, 20315. Nov. 13, '06.

435 [Endorsed:] File No. 20,315. Supreme Court U. S., October Term, 1906. Term No. 350. The Old Dominion Steamship Co., &c., petitioner, *vs.* Primus Gilmore, adm'r &c. Writ of certiorari and return. Filed Nov. 13", 1906.

FILED
JUL 26 1906

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906. No. [redacted] 71.

IN THE MATTER

OF

The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton*, for limitation of liability,
Petitioner-Appellant,

PRIMUS GILMORE, *et al.*,
Claimants-Appellants.

Petition for writ of *certiorari*.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of the Old Dominion Steamship Company, as owner of the Steamship *Hamilton*, respectfully shows:

On May 5th, 1903, a collision occurred on the high seas near Winter Quarter Lightship between the steamship *Hamilton*, belonging to this petitioner, and the steamship *Saginaw*, of the Clyde Steamship Company. The *Saginaw* was sunk; her chief mate, steward, assistant steward, stewardess and some of her passengers were drowned.

Proceedings to limit the liability of both vessels

were instituted in the District Court of the United States for the Southern District of New York. Claims were made for the loss of the *Saginaw* and her cargo, for loss of life and for personal injuries and loss of personal effects.

The District Court held both vessels in fault, but permitted their owners to limit their liability, and provided for a reference to fix the amount of damages.

Record, fols. 508-544; reported 134 Fed. Rep., 95.

The District Court found that a dense fog had prevailed for several hours before the collision. It condemned the *Hamilton* for her excessive speed, but held that the other faults charged against her had not been proved. It found that prior to the collision the *Saginaw* had been running for more than 20 miles in a dense fog under full speed bells, and that although there was some slight reduction of speed near the point of collision, it was then at least six knots, and hence excessive. The *Saginaw* was held in fault also for failing to observe article 16th of the Regulations for preventing collisions at sea, as after hearing the whistles of the *Hamilton* nearly ahead, she kept on under the same speed. Prior to the collision, the master left the pilot-house and went forward, leaving the mate in charge.

Record, fol. 526; 134 Fed. Rep., 95-98.

The Court also held that both vessels, being owned by Delaware corporations, were a part of the territory of that State; also that under the statute of the State of Delaware the claimant had a right of recovery in the admiralty for loss of life of those from the *Saginaw*

who were drowned in the collision, although as against the *Hamilton* there was no element of contract involved, all the claims being by persons who were on the *Saginaw*. Any recovery necessarily was for the *tort* of the *Hamilton*, as an outside colliding vessel. The Court declined to distinguish such a case of *tort* from the claim by a passenger against the carrying ship.

The matter was referred to a Commissioner under interlocutory decree.

Record, fols. 545-555.

There remained pending before the Commissioner only certain claims for loss of life all filed against the *Hamilton*.

The Commissioner, in his report, found that "in assessing damages and in passing upon the question of contributory and imputed negligence, the law to be applied" was the law of Delaware, and he relied upon the mortality tables in estimating the expectations of life of the several decedents. The report came on exceptions to the District Court.

These exceptions were overruled by the Court, but the amounts awarded to the claimants by the Commissioner were somewhat reduced.

The following are the claims as finally adjudged:

Name.	
Gilmore—passenger	$2,000
Swanson—passenger	2,750
Goslee—chief officer	6,000
Morris—chief steward	3,000
Page—cook	3,000
Sarah Elam—stewardess	1,500

Record, fols. 1079-1143; 139 Fed. Rep., 906.

In its opinion on the exceptions to the Commissioner's report, the Court held:

(1) That in reaching the amounts to be awarded as damages the measure of recovery should be ascertained according to the law of the place, *i. e.*, Delaware, and that courts of admiralty must determine the amounts in practically the same way as juries would reach them.

Record, fol. 1122.

(2) That the mate of the *Saginaw* was not personally negligent.

(3) That the representatives of the others of the crew of the *Saginaw* who lost their lives should recover full damages against the *Hamilton*.

The finding of "both to blame" was mutually accepted, and the Clyde Steamship Company did not appeal.

From the final decree of the District Court, the Old Dominion Steamship Company appealed to the Circuit Court of Appeals for the Second Circuit, setting forth in its notice of appeal that it desired to review only the following questions:

The action of the Court in sustaining claims against the petitioner on behalf of certain persons alleged to have been members of the crew and passengers on the *Saginaw* for damages by death from collision on the high seas.

The findings, conclusions and orders of the Court regarding such claims, including the overruling of petitioner's exceptions to the report of the Commissioner.

Also as to the several sums adjudged by the Court to the various claimants for loss of life.

Record, fol. 1173.

The damage claimants also appealed from that part of the decree which reduced the awards made by the Commissioner.

The Circuit Court of Appeals affirmed the decision of the District Court, without costs, and on July 7th, 1906, entered its order for the issuance of its mandate.

The petitioner now applies to this Court for a writ of *certiorari* to bring the cause before this Court for review.

The questions presented for the consideration of this Court are:

FIRST.—Does the Delaware statute apply to a claim for death on the high seas arising purely from *tort* in proceedings in Admiralty?

The Circuit Court of Appeals has held that it does.

SECOND.—Can the representatives of the deceased members of the crew of the *Saginaw* recover their claims in full against the *Hamilton?*

The Circuit Court of Appeals has held that they can.

In its opinion the Circuit Court of Appeals said:

"In the recent case of *La Bourgogne;* 139 Fed. Rep., 433, 439, we had occassion to reaffirm this doctrine as to death claims growing out of a collision in a fog on the high seas, the *Bourgogne* being sunk with great loss of life. The law of France permits a recovery in such circumstances and, in a proceeding to limit the liability of

the owner, we held that the French law extended to and operated upon the *Bourgogne* in mid-ocean.

We are informed that the Supreme Court has recently granted a *certiorari* in the *Bourgogne* case and, in view of the similarity of the questions involved, it is not improbable, should a petition for a writ be filed, that a similar course may be taken in the case at bar. We see no impropriety in saying that such a result would be gratifying to us."

Record, fols. 1258, 1259.

In the *Bourgogne* case the decedents were allowed to recover against the ship that carried them under the law of the French flag. In the case at bar passengers on another ship are allowed a recovery against the *Hamilton* without any privity whatever. Furthermore, the members of the *Saginaw's* crew who could not recover against their own shipowners, are given their full damages against the *Hamilton* notwithstanding the fact that their death was due in part to the negligent navigation of their own ship's company.

There is no uniformity in the federal courts at present in dealing with death in the admiralty. This uncertainty should be settled by the judgment of this court.

Where loss of life occurs *within* state waters, the federal decisions in the lower courts are irreconcilable.

In the Third Circuit, it has been held that the Acts of Assembly of Pennsylvania do not create a lien for death by negligence upon the high seas, and that as there is no jurisdiction otherwise, no such suit can be sustained.

Welsh *v.* The *North Cambria*, 40 F. R., 655.

The Circuit Court of Appeals for the Fourth Circuit, in The *Glendale*, 81 F. R., 633, held that a state statute giving the right *in rem* against a vessel wrongfully or negligently causing the death of any person (Code Va. Sec., 2902) creates a lien enforceable by a libel *in rem* in the federal courts, if the accident occurs within waters of the state navigable from the sea.

This was also declared in the Ninth Circuit in The *Willamette*, 70 F. R., 974, and The *Dauntless*, 121 F. R., 420 (District Court California), but in 1904, that Circuit Court of Appeals reversed the *Dauntless* judgment, holding that there was no lien, even under the State statute, and hence that a suit *in rem* could not be maintained.

The *Dauntless*, 129 F. R., 715.

In the Fifth and Sixth Circuits it has been decided that a libel *in personam* may be maintained in admiralty under a State statute like Lord Campbell's Act.

The *St. Nicholas*, 49 F. R., 671.
Robinson *v.* Detroit & C. Steam Nav. Co., 73 F. R., 883.
Burrell *v.* Fleming, 109 F. R., 489.
Quinette *v.* Bisso, 136 F. R., 825.

In the Ninth Circuit, also, in the case of Alaska Commercial Co. *v.* Williams, 128 F. R., 362, it was held, affirming the judgment of the District Court for Division No. 1 of the District of Alaska, that recovery could be had under the territorial statute of Alaska for the death of a man wrecked within the three-mile shore limit off the coast of Alaska.

Where death has occurred *on the high seas*, there is a wide difference in applying the terms of State statutes.

In the First Circuit it has been held that under the statute of Massachusetts, nothing should be awarded for the death of persons drowned in collision, but that compensation should be made only for their mental and physical suffering before death.

The *Robert Graham Dunn*, 70 F. R., 270.

The Court there said :

"Whether the claims of the deceased seamen are of such a nature as to survive in admiralty is a question that was not raised at the argument, and has not been considered by the Court."

The Circuit Court of Appeals for the Seventh Circuit has held that a suit in admiralty cannot be maintained in a court of the United States, either under the general maritime law or any application of the law of France, to recover damages for the negligent death of a person on the high seas.

Rundell *v.* Compagnie Générale Transatlantique, 100 F. R., 655.

In the Eighth Circuit, in the case of Oleson *v.* The *Ida Campbell* (District Court, Minnesota), 34 F. R., 432, although the general statutes of Minnesota provide that "when death is caused by the wrongful act, or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived," the court dismissed libels both *in rem* and *in personam*, filed by the administratrix to enforce a marine tort, holding that in case of death from such a tort, the action does not survive in admiralty.

In the Ninth Circuit, in the *Jane Grey* (District Court, Washington, N. D.), 95 F. R., 693, Judge

Hanford held that the law of the forum controls in determining the question of the liability of the owners of a vessel, who are citizens of the United States, for damage for negligence resulting in death on the high seas; and that admiralty would enforce such state statutes giving a remedy for death in limited liability proceedings.

It is submitted that these grave questions are unsettled, and should be determined by this Court.

WHEREFORE the petitioner prays that this Honorable Court will cause a writ of *certiorari* to be issued requiring the United States Circuit Court of Appeals for the Second Circuit to certify the record herein to this Court, so that this Court may act thereon, as of right and according to law ought to be done, and your petitioner will ever pray, etc.

THE OLD DOMINION STEAMSHIP COMPANY,
by WING, PUTNAM & BURLINGHAM,
its proctors.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

CHARLES C. BURLINGHAM, being duly sworn, says: I am a member of the firm of Wing, Putnam & Burlingham, proctors for The Old Dominion Steamship Company, the petitioner herein. I have read the foregoing petition, and the same is true to the best of my knowledge. I am of the opinion that the decision of the United States Circuit Court of Appeals for the Second Circuit in this matter is erroneous in the particulars stated in the petition, and that the foregoing application for a writ of *certiorari* is meritorious and that the case is a proper one for the extraordinary relief authorized by the statute.

CHARLES C. BURLINGHAM.

Sworn to before me this 21 day of July, 1906.

HENRY E. MATTISON,
[SEAL.] Notary Public,
Kings County.
Certificate filed in New York County.

I certify that I have examined the foregoing petition, and that in my opinion the same is well founded and one in which the prayer thereof ought to be granted.

HARRINGTON PUTNAM.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

No. 350

IN THE MATTER

OF

The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton*, for limitation of liability,

Petitioner-Appellant,

PRIMUS GILMORE *et al.*,

Claimants-Appellants.

BRIEF FOR THE OLD DOMINION STEAMSHIP COMPANY, PETITIONER.

The questions presented by the petitioner for the consideration of this Court are:

FIRST.—Does the Delaware statute apply to a claim for death on the high seas arising purely from *tort* in proceedings in admiralty?

SECOND.—Can the representatives of the deceased members of the crew of the steamship *Saginaw* recover their claims in full against the steamship *Hamilton*?

In its opinion, the Circuit Court of Appeals said:

"In the recent case of *La Bourgogne*, 139 Fed. Rep., 438, 439, we had occasion to reaffirm this doctrine as to death claims growing out of a collision in a fog on the high seas, the *Bourgogne* being sunk with great loss of life. The law of France permits a recovery in such circumstances, and, in a proceeding to limit the liability of the owner, we held that the French law extended to and operated upon the *Bourgogne* in mid-ocean.

We are informed that the Supreme Court has recently granted a *certiorari* in the *Bourgogne* case, and, in view of the similarity of the questions involved, it is not improbable, should a petition for a writ be filed, that a similar course may be taken in the case at bar. We see no impropriety in saying that such a result would be gratifying to us."

Record, fols. 1258, 1259.

I.

DOES THE DELAWARE STATUTE APPLY TO A CLAIM FOR DEATH ON THE HIGH SEAS ARISING PURELY FROM TORT IN PROCEEDINGS IN ADMIRALTY?

The Old Dominion Steamship Company is a corporation of the State of Delaware, and the Clyde Company is also a corporation organized under the laws of the same State. The State of Delaware gives a statutory remedy for loss of life by negligence.

The collision occurred on the high seas. The loss of life claims here represented are as follows:

Swanson and Gilmore were passengers on the *Saginaw;*

Morris was a steward on the *Saginaw;*
Goslee was chief mate of the *Saginaw;*
Sarah Elam was stewardess on the *Saginaw.*

All these claims are represented by administrators appointed by the courts of Virginia and Delaware. All the claims are filed against the Old Dominion Steamship Company alone, although the decedents were all of them passengers or officers on the *Saginaw.*

This wholly removes every element of contract, since no contractual relation existed between the *Hamilton* and persons on board the *Saginaw.* Any recovery therefore which these persons may secure must necessarily rest upon the theory of a maritime tort, as against an outside colliding vessel. The proposition here raised is different from those previously decided, and consists in this: "Is there a recovery in admiralty for loss of life on the high seas where there is no element of contract involved?"

I.—The Distinction between Law of Contracts and of Tort.

It is important to note the distinction between claims in contract by passengers and others against their carriers and, on the other hand, claims against a colliding steamer for pure tort. In the contract relations of vessel, crew and passengers, and even of cargo, courts regard the law of the vessel's flag, as an element or condition of the contract—a tacit implication that, as to all matters not dealt with specifically, the parties have agreed to be bound by the law of the flag.

In the relation which springs out of tort, however, there is no basis for saying that the parties have impliedly consented to be bound by the law of any particular State. As a consequence their rights and liabilities are to be determined by the general principles of maritime law as

administered in our admiralty courts. If the *Hamilton* had belonged in one State, the *Saginaw* in another and the deceased in still a third State, how could the law of any particular State more than another have precedence and a controlling influence? On the contrary, there is no presumption that the relations of the parties are to be fixed by the laws of any one State when an injury accrues on the high seas through a pure marine tort.

> "In cases arising in tort upon the high seas the United States District Court sitting in Admiralty cannot enforce the law of France even if it in terms applied to the case * * * but that such cases must be adjudged and governed by the general maritime and admiralty law as understood and administered by the United States Courts."
>
> (Rundell *vs.* Compagnie Generale Transatlantique [94 F., 366; aff., 100 F., 655]).

The origin of the fiction that a merchant ship may be regarded as a floating portion of a country; or, as the doctrine is sometimes expressed, that they are a continuation or prolongation of the national territory, is as recent as 1752. Modern writers treat this fiction as having only a limited application.

Hall, in his last edition (A Treatise on International Law, Oxford, 1904), says:

> "It does not appear that the doctrine of the territoriality of vessels can be traced further back than to the 'Exposition des Motifs' put forth in 1752 by the Prussian government in justification of its behavior in confiscating the funds payable to its English creditors in respect of the Silesian Loan. In that repertory of bad law it is said that 'the Prussian vessels, although laden with property belonging to the enemies of England, were a neutral place, whence it follows that it is exactly the same thing to have taken such property out of the said vessels as to have taken it upon neutral territory.' The assertion, of which the object was to produce the impression that the English, in acting

upon an ordinary usage, had been guilty of illegal conduct, was supported by no reasoning. In its origin, therefore, the doctrine had just so much authority as belongs to a legal proposition laid down by an advocate whose law is notoriously bad. A few years later the idea reappears in Vattel, but he uses it only incidentally to explain a particular custom, and evidently without adequate consideration of its scope and bearings. Children born at sea, he says, if born in a vessel belonging to the state of which their parents are subjects, 'may be considered to be born within the territory, for it is natural to regard the ships of the nation as parts of its territory, especially while they navigate unappropriated waters, since the state preserves its jurisdiction over them. * * * The territoriality of a vessel is a metaphorical conception; and before a metaphor can be employed as an operative principle of law, it must be proved to have been so adopted into law as to render its use necessary, or at least reasonable' " (pp. 249, 250).

The theory applicable to merchant vessels must be one of contract. It was early settled in England that the law of the flag determines the power of the master to deal with cargo, and measures the scope of the master's authority to bind the owner by his contracts.

Lloyd *vs.* Guibert, Law Reports, 1 Q. B., 115 (1865).

This was further amplified as to cargo in 1882.

In the case of *The Gaetano and Maria*, L. R., 7, P. D., 137-146, Justice Brett (Lord Esher) said:

" The goods are put on board an Italian ship, and the person to exercise authority is an Italian master. Is the authority of the Italian master to depend upon the law of the country of the shipper, when that law is contrary to the law of his own country? Why should it? Is the master of a ship to be taken to know the law of the country of each shipper of the goods which are put on board his ship? It would be strange if that were so. If a merchant puts his goods into the power

> of an Italian master on board an Italian owner's ship, what is the meaning of the transaction, but that he is to deal with the goods as an Italian master is to be taken to deal with goods on board his ship unless he is bound to another mode? Upon principle it seems to me that he who ships goods on board a foreign ship, ships them to be dealt with by the master of that ship according to the law of the country of that ship, unless there is a stipulation to the contrary. Therefore, when these goods were shipped on board the Italian ship, it seems to me that by the contract of the parties arising out of that shipment it must be taken that the goods were to be dealt with under circumstances which might arise and which are generally considered likely to arise by all maritime countries, in the way in which that master would deal with the goods according to the law of Italy, unless there was some stipulation to the contrary."

In making a contract, or in entering into business relations with a ship, outside parties are presumed to regard the law of some place. Obviously, to infer that they had regard to the law of the flag is natural and reasonable as underlying the express terms of a contract made in ports of refuge or in places out of the usual course of voyage. Hence, at the Antwerp Conference of 1887 it was decided that the law of the flag determines the responsibility of the owner for contracts entered into by the master. Other contractual relations have also been referred to the same law.

But the fundamental distinction between wrongs committed on the high seas, and contracts entered into with the ship is obvious. In France, the law of the flag has sometimes been applied to torts on the high seas, but generally for the purpose of imposing on foreign vessels a greater liability (for example £8 a ton) than is given by the law of France.

A writer of repute (Professor Cohendy of the law faculty of Lyons in a note Dalloz, 1889, II., 147), discussing this

question makes clear this difference between contracts and torts.

Independent of precedent, it is plain that the liability for wrongs, and especially for causing death, is to be determined in admiralty by the court administering the law of the forum. No State can extend its laws over the ocean. The Federal laws alone, and the maritime jurisprudence administered by the Federal courts must decide the liability for wrongs committed outside of territorial waters. Otherwise, in the case of a collision with a Spanish vessel, and one, for instance, from Portugal, this court would be called on to apply on the high seas a system of possible liability entirely foreign to our jurisprudence. Such a doctrine would go so far as to require it to be imposed even if the supposed collision occurred more than a league from Sandy Hook.

The doctrine that merchant ships are part of the territory, if applicable to collisions, would also govern salvage on the high seas. Such attempts to impose foreign laws have often been made, but have never been successful in the United States Courts.

It is also clear that the territorial fiction depends on contracts, because publicists recognize that it is only when the crew are on board that the doctrine of territoriality applies. Once the contracting members of the ship's company leave the vessel the fiction vanishes (Woolsey, International Law, 6th Ed., p. 72).

Statutes providing for the survivorship of rights of action, and recovery in case of loss of life, have been enacted in varying forms, not only by the States of the Union but also by foreign countries, with which the United States has intimate relations—especially by England and the Canadian provinces. The system of law on the Continent of Europe in some form also gives a recovery for loss of life. Yet in no case have the courts of Great Britain or the

United States regarded the law of the flag upon the high seas as authorizing such a recovery in the admiralty courts. Even in Canada the admiralty has no jurisdiction for loss of life (Monaghan *v.* Horn, 7 Du Val [Supreme Court, Canada], 409).

The same rule was reached in England (notwithstanding Lord Campbell's Act) that admiralty has no jurisdiction for loss of life.

The Vera Cruz, 10 App. Cas., 59 (1884).

The very absence of precedent on this point is the strongest argument against the existence of such a remedy in admiralty.

In the *Corsair*, 145 U. S., 335 (1891), the collision occurred in the Mississippi River, about ten miles above the City of New Orleans. The libel *in rem* was followed by an amended libel *in personam*, but both libels were dismissed, upon the ground that the statute of Louisiana did not authorize an admiralty suit *in rem*, and the subsequent amendment to the libel *in personam* was improper, as the libel did not aver facts sufficient to establish a cause of action.

While it is true that for matters of internal commerce the States are regarded as foreign, they are not so considered with respect to maritime and sea interests, except where contracts are concerned. Domestic vessels can carry only one flag. By the Constitution, all maritime and admiralty jurisdiction is conferred on the Federal Government; so that even in commercial contracts the Federal court is in no respect bound by the commercial laws of the different States.

For example, the decisions of the State of New York allow negligence clauses in the contracts of common carriers, and this, before the Harter Act. Yet no Federal court has felt bound to follow the laws of New York in

regard to any vessel documented in this port, whether within or without the territorial jurisdiction of this State. The fiction of exterritoriality, therefore, has less application to the ships of the different States of the Union than might possibly be accorded to it, when dealing with the ships of a country wholly foreign.

The evident tendency of the decisions, and weight of authority is that cases of tort arising upon the high seas will, in the admiralty courts of the United States, be governed by the law of the forum which is the general maritime law as administered in these courts.

The Scotland, 105 U. S., 24.
The Belgenland, 114 U. S., 355.
The Brantford City, 29 F., 373.
Benedict, Adm., §§ 74, 111.

It is important to note that the cases cited to sustain the present claimants are those in which the relation subsisting between the injured person and the ship was a contractual relation, that is, the claimants or the persons whom they represented were either passengers or members of the crew. In the *Harrisburg*, 119 U. S., 199, the decedent was a member of the vessel's crew. The same was true in the suit for injuries which gave rise to the dictum in the *Lamington*, 87 Fed. Rep., 752. In McDonald *vs.* Mallory, 77 N. Y., 572, the decedent was a fireman on the steamer. In Rundell *vs.* The Compagnie Générale Transatlantique, 97 Fed. Rep., 366, and in Lindstrom *vs.* International Navigation Company, 116 Fed. Rep., 172, the rights under consideration were those of passengers proceeding against their own carrier.

Although the language of the Court of Appeals in the latter case is stated broadly, the dictum of the Court must be limited to the special facts under which the liability arose.

In the *Alaska* case alone [130 U. S., 201] was the question of tort involved. There a New York pilot boat was run down by a British steamer on the high seas and pilots on board the pilot boat were drowned. Recovery was sought against the steamer *in rem* under a New York statute permitting the survival of death claims. It was held that there could be no recovery for the loss of lives.

II.—Maritime Law must be Uniform.

Under the common law there was no survival of actions for injuries resulting in death. By Lord Campbell's act this rule of the common law was changed, although it was later decided that Lord Campbell's act had no application whatever in the Admiralty Law (*The Vera Cruz*, 9 P. D., 88; 10 App. Cas., 53). Our Courts have also declared that in the absence of a statute changing it, the rule in admiralty is the same as provided at the common law (*The Harrisburg*, 119 U. S., 199).

If, therefore, one State should enact that death claims should survive, and a recovery should be sought in the Admiralty Court sitting in that State for loss of life on the high seas through a marine tort, a suit would lie; while if like redress be sought in a State which had passed no such law, it would not be granted. The relief sought and given in death cases in admiralty would, therefore, be one thing in one State and another thing in another State.

In Crapo *v.* Allen, 1 Sprague, 184, Sprague, District Judge, said:

> "I cannot think that for a transaction on the high seas a personal suit in admiralty may be maintained in one district of the United States and not in others. * * * Such an incongruity is inadmissible."

Next to the natural justice of its principles, the highest value of maritime law consists in its uniformity and general acceptance. We are not dealing with municipal law nor with general commercial law not maritime, both of which are prescribed and administered concurrently by the State and Federal legislatures and courts, but we have to deal with that which relates exclusively to the maritime law and the admiralty jurisdiction. That law is not subject to the change or modification of capricious State legislatures.

> "As a general proposition a State in this Union has no power to affect the law maritime. To acknowledge the authority of a State of this Union (not sovereign in its power over commerce) to change in any particular the maritime law would be to end—to destroy that law of a system of jurisprudence by subjecting ships of commerce to a different law in every American port in which they enter. Hughes, *J.*, in *The Manhasset*, 18 F., 918, 922."

Indeed, one of the controlling reasons for conferring on the general government the exclusive jurisdiction of all admiralty and maritime causes was to secure the great benefits which must inevitably result from uniformity in the maritime law.

A State cannot, therefore, destroy the symmetry of that law by creating maritime rights or conferring jurisdiction in any particular upon an admiralty court.

> "The right of an administrator to damages for injury to his intestate when alive is not a maritime right and is unknown to the maritime law. The right of action to recover such damages does not belong under the admiralty jurisdiction to an administrator, and I think cannot legally be sustained in an admiralty court."
>
> *The Manhasset*, 18 F., 918, 923.

The danger to the uniformity of the admiralty law by allowing admiralty courts to follow the jurisprudence of

the States has been well set forth by Mr. Justice White in Workman *v.* The Mayor, etc., 179 U. S., 552, 558:

> "The practical destruction of a uniform maritime law which must arise from this premise is made manifest when it is considered that, if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of State courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would necessarily be one thing in one State and one in another; one thing in one port of the United States and a different thing in some other. As the power to change State laws or State decisions rests with the State authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrong done instead of being general and ever abiding, would be purely local—would be one thing to-day and another thing to-morrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent. And the principle by which the maritime law would be thus in part practically destroyed would besides apply to other subjects specially confided by the constitution to the Federal Government. Thus, if the local law may control the maritime law, it must also govern in the decision of cases under the patent, copyright and commerce clauses of the constitution."

The absence of uniformity in the federal courts at present in dealing with death in the admiralty is clearly set forth in the cases cited by the petitioner in its petition. Not only is there a wide difference in applying the terms of State statutes where death has occurred *on the high seas*, but also where loss of life occurs *within* State waters, the federal decisions in the lower courts are irreconcilable.

It is submitted that this uncertainty should be settled by the judgment of this court.

II.

CAN THE REPRESENTATIVES OF THE DECEASED MEMBERS OF THE CREW OF THE *Saginaw* RECOVER THEIR CLAIMS IN FULL AGAINST THE *Hamilton*?

Regarding the claim of Alvin Lee Joseph, as executor of the will of Edward S. Goslee, the chief officer of the *Saginaw*, the Commissioner's findings are at folios 1041, 1043. For the petitioner, it was excepted, that the chief mate of the *Saginaw* was culpably concerned in the *Saginaw's* navigation; also that the owner of the *Hamilton* would only be liable for half damages by the maritime law, under the *Osceola*, 189 U. S., 175, to any member of the *Saginaw's* crew.

This raised two points quite distinctly, namely: the doctrine of fellow servant, and the maritime rule that the owner of the *Saginaw* would not be liable for any negligence of his crew toward each other; and hence that only a moiety of such recovery could be had against this petitioner, as owner of the *Hamilton*.

The courts below have concurred in the finding that Goslee was not personally negligent, and that, as he was under the control of the master, the doctrine of fellow servant was not applicable. As to the rule of the *Osceola*, the courts below have instead followed the State decisions, and ignored the admiralty law on this subject.

The fault for which the *Saginaw* was condemned was one of navigation. There is no claim that the owners were culpable, or that the ship was unseaworthy. In such case it is now settled by this Court that no action lies against the ship or owner for the negligence of any member of the crew. The duty of the owner is to furnish a seaworthy ship, and then to provide medical treatment to those requiring it, if needed to effect a cure, for hurts received in the service of the ship.

This point is not the same as the common law doctrine of fellow-servant—where in such case no recovery can be had for loss of life (Naylor *v.* N. Y. Central, 33 F. R., 801). It is a rule peculiar to the law maritime, which declares the shipowner under no liability to his officers and crew for the personal injuries resulting from errors in navigating a fit ship.

As to the claims of those who composed the crew of the *Saginaw*, we cite the latest expression of this Court in the *Osceola*, 189 U. S., 158, 175, where Justice Brown said:

> "The seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

Of course, if a surviving member of the *Saginaw's* crew cannot recover from the Clyde Line any indemnity, it is evident that no cause of action for death can be conferred by any statute as between the seaman's next of kin (who, by statute, are subrogated to the seaman's rights) and the Clyde Company.

How does this rule affect the *Hamilton?*

Under a familiar principle, the *Hamilton's* owners are only liable for a moiety of what would otherwise be the loss and recovery of the *Saginaw's* crew. This, for the reason that the faults of the *Saginaw* are exclusively those of navigation. Her equipment was unquestioned. In fact, the decision of the Court acquits the Clyde Line of all blame for, or privity with, the collision. The neglects were therefore of their own ship's company, which debar any member of the crew from recovery, under the *Osceola* decision. Hence, as these seamen could not recover at all from their own ship, if living, their widows and next of kin cannot enforce any greater rights than could they, had they survived. As the claim against the

Clyde Company is not valid, the claim against the *Hamilton* cannot be maintained for its full face, but the *Hamilton* remains answerable only for half of all such losses.

The City of New York, 25 F. R., 151.
The Queen, 40 F.R., 694.
Stahl *v.* Niagara, 77 F. R., 329, 336.

Other claims urged on behalf of the estates of members of the crew are Mary Anderson, administratrix of Sarah Elam, the colored stewardess, and Sallie T. Morris, as administratrix of William Morris, the steward of the *Saginaw*.

All of these decedents, by well-recognized principles of the maritime law, were members of the ship's crew, and in case of personal injuries resulting from negligence in navigation, are entitled to only such attention and treatment as the owner might give after the accident. By the reasoning already stated, their claims against the *Hamilton* can in no event be decreed for more than one-half.

It is submitted that the claims should have been disallowed as against the steamship *Hamilton* and the Old Dominion Steamship Company, or, in any event, that the awards as made should have been reduced to *half* the losses as found.

III.

These questions are grave. The diverse judgments of the different lower Federal jurisdictions illustrate the difficulty of finding and applying the principles of the law maritime.

If this decision is left unreviewed, it will leave two influential Courts of Appeal (the Second and the Seventh) standing in direct antagonism. To have such an an-

tinomy remain in the maritime law, as to rights that transcend mere property interests, would be regrettable. It is perhaps a reproach to Congress that it has not dealt with this difficulty.

Questions of loss of life at sea have rarely reached this Court. The *Harrisburg* was twenty years ago, and it is fifteen years since the *Corsair*.

The learned members of the Court below, in effect, have joined in asking for this *certiorari*.

The pending appeal in the *Bourgogne* proceedings concerns different questions. The rule to be declared in that case, or in any similar proceeding between the carrying ship and its own passengers, may not apply here. That decision cannot reach the wider field of the general liability for *torts*, causing death on the high seas.

IV.

THE PETITION FOR A WRIT OF *certiorari* SHOULD BE GRANTED.

HARRINGTON PUTNAM,
Advocate for the Petitioner, Old Dominion
Steamship Company.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKINNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

In the Matter
of
The petition of the OLD DOMINION STEAMSHIP COMPANY as owner of the Steamship "HAMILTON" for limitation of liability.
THE OLD DOMINION STEAMSHIP COMPANY,
Petitioner,

AGAINST

PRIMUS GILMORE, *et al.*,
Claimants-Respondents.

October Term 1906 No. [redacted] 71.

This is a petition for a certiorari to the United States Circuit Court of Appeals for the Second Circuit in a case in which that Court has affirmed the decree of the District Court for the Southern District of New York.

The Circuit Court of Appeals held that the representatives of various persons who were drowned in a collision between the petitioner's steamship *Hamilton* and the Clyde Liner *Saginaw*, for which both steamships were held in fault, were entitled to recover their full damages against the petitioner.

Both vessels were owned by Delaware corporations and the claims were made under and in conformity with the statute of that state creating a right of action for wrongful death.

Two of the decedents were passengers on the *Saginaw* and three were members of her crew.

The petitioner asks this Court to issue the writ in order to consider:

1. Whether under a State Statute a claim for death is maintainable in admiralty against a vessel other than the carrying vessel.

2. Whether if it is maintainable and both vessels are held to blame, the representatives of deceased members of the crew of one of the vessels should be allowed to recover their *full* damages against the other.

On both of these questions the law of this Court seems to be well settled. On both of them the decisions of the inferior Federal Courts are practically uniform.

1. An effort is made by the petitioner to distinguish the cases referred to from this case on the ground that in them the persons whose lives were lost stood in contractual relations under contracts of carriage or service with the owners of the vessels involved and that the cases which have hitherto sustained jurisdiction for loss of life on the high seas are not authorities for the proposition that recovery may be had against another than the carrying vessel, when the cause of action sounds in pure tort.

This seems to be a distinction without a difference, and in each of the reported cases dealing with this question the Court evidently considered that it was dealing with a question of tort.

The Circuit Court of Appeals in disposing of

the ingenious but somewhat fanciful argument of the petitioner's counsel on this question, said:

"The facts in hand are of course not identical with those in the cases cited, but we are of the opinion that they cannot be successfully distinguished because of these differences." Fol. 1259.

"Every consideration based on equity and natural justice impels us to hold that it was not the purpose of the limited liability act to enable vessel owners to force claimants into the admiralty, and thus avoid claims which are valid and enforceable at common law. The intent was to limit liability, not to destroy it."

"It is true that no contractual relation existed between the claimants' intestates and the Old Dominion Company or the *Hamilton,* but we see no reason based on sound logic, why a passenger on the *Hamilton* should be permitted to recover for her negligence and a similar right be denied to the passengers of the *Saginaw* injured by the identical negligence." Fol. 1265.

The District Court dealt with this contention in the same manner. Fol. 543.

This Court has never intimated that claims of this kind are not maintainable. On the contrary the implication has been that they are.

This Court has merely rejected claims in which the remedy by which damages were sought was not warranted, because no action *in rem* was created by the state statute invoked. *The Harrisburg,* 119 U. S., 119; *The Corsair,* 145 U. S., 335; *The Alaska,* 130 U. S., 201.

In the last case the question of recovery for loss of life was not complicated by any contract, yet there was not a suggestion by counsel or by this Court that the action was not maintainable for

that reason. It was admitted by counsel that the New York Statute was not applicable, but the Court held that recovery would not have been possible in the case because the action was brought *in rem.* It was a decision on the mode of proceeding only and did not deal with the essence of the right. That seemed to be recognized.

In the case of *Rundell* v. *The Compagnie Generale Transatlantique,* 97 Fed., 336, so much emphasized by the petitioner, the Circuit Court of Appeals of the Seventh Circuit affirmed a decree sustaining exceptions to the libel, because there were not proper allegations that the death occurred within French territory *i.e.* on *La Bourgogne,* the French steamer by the sinking of which the death of the libelant's decedent occurred. That case is, therefore, not properly in conflict with the decision of the Circuit Court of Appeals of the Second Circuit in this case or in the cases of *Lindstrom* v. *The International Navigation Co.,* 123 Fed., 475, and *La Bourgogne,* 139 Fed., 433, 438.

All the reported authorities seem to support the decision of the Court of Appeals in this case. *The Lamington,* 87 Fed., 754; *McDonald* v. *Mallory,* 77 N. Y., 546; *The Scotia,* 14 Wall., 170; *Crapo* v. *Kelly,* 16 Wall., 610, 624-632; *Wilson* v. *McNamee,* 102 U. S., *Sherlock* v. *Alling,* 93 U. S., 99; *Armstrong* v. *Beadle,* 5 Sawy. 484.

The Commissioner and both of the lower Courts very aptly pointed out that to refuse jurisdiction of death claims in limitation proceedings would be especially unjust, because the claimants in such proceedings are forced into Admiralty by the injunction issued by the Admiralty

Court against their bringing suit elsewhere. As the Court of Appeals said, the intent of the statute is to *limit* liability, not to *destroy* it. Fols. 1019, 1087.

It is submitted, therefore, that there is no reason why this Court should issue the writ so far as the first ground advanced by the petition is concerned.

2. The other contention of the petitioner seems also to be without merit as ground for certiorari.

It has been repeatedly held by this Court that innocent parties suffering damage in a collision may recover all of their damages from either vessel, and that the question of contribution comes up merely as between the two vessels. *The Atlas,* 93 U. S., 302, 317; *The Juniata,* 93 U. S., 337; *The North Star,* 106 U. S., 17, 22; *The Chattahoochee,* 175 U. S., 540, 549; *The New York,* 175 U. S., 187, *The Albert Dumois,* 177 U. S., 240, 243, 260; *Ex parte Union Steamboat Co.,* 178 U. S., 317; *The Conemaugh,* 189 U. S., 363.

In *The Albert Dumois,* it seems that this Court decided the very question now sought to be raised by the petitioner under its second point: that full damages for death of passengers on one of two colliding vessels, and the full value of the lost effects of members of her crew could be recovered against the other vessel where both are held to blame.

The doctrine of imputed negligence is exploded. *Little* v. *Hackett,* 116 U. S., 366. A defendant if guilty of fault is not freed because another than the plaintiff is also guilty. *Grand Trunk Co.* v. *Cummings,* 106 U. S., 700.

The Court of Appeals in this case rightly held that the doctrine of *The Osceola,* 189 U. S., 158, invoked by the petitioner's counsel, is applicable only as between a vessel and her *own* crew. It is based on the seaman's contract of service.

The Court of Appeals was right in allowing the representatives of the deceased members of the *Saginaw's* crew full damages against the petitioner.

The fact that this Court has taken up the case of the *Bourgogne,* which involves many other questions than that of jurisdiction for loss of life on the high seas, is, it is submitted, no reason why this case should be taken up, unless the Court is now satisfied that under the circumstances of this case, claimants' who have been enjoined from proceeding in the state courts should lose their right of action, owing to the right of the petitioner to invoke the privilege of limiting its liability in an admiralty court.

The application for a writ of certiorari should be denied.

New York, October 12, 1906.

J. Parker Kirlin,
John M. Woolsey,
Of Counsel for Claimants, Joseph, Goslee, Anderson and Morris.

FILED
OCT 16 1906

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. [redacted].71.

In the Matter of
The Petition of the OLD DOMINION
STEAMSHIP COMPANY, as owner
of the Steamship Hamilton, for
limitation of liability,

Petitioner-Appellant,

PRIMUS GILMORE, et al.

Claimants-Appellees.

Brief of Mary Swanson, Claimant, in Opposition to the Application of the Old Dominion Steamship Company, for a Writ of Certiorari to the United States Circuit Court of Appeals for the 2nd and Circuit.

HUNT, HILL & BETTS,
Proctors for Mary Swanson
Claimant-Appellee.

Wm. Whitewright Symes, Jr.,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1906.

In the Matter
of
The Petition of the OLD DOMINION STEAMSHIP COMPANY as owner of the Steamship Hamilton, for limitation of liability,
Petitioner-Appellant,

PRIMUS GILMORE, et al.,
Claimants-Appellees.

Brief of Mary Swanson, Claimant, in Opposition to the Application of the Old Dominion Steamship Company for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Statement.

The above petition for a limitation of liability, originated in the United States District Court for the Southern District of New York, and resulted in a final decree by that Court, entered August 10, 1905, limiting the liability of petitioner as owner of the Hamilton, and decreeing to Mary Swanson, as widow of Peter Swanson, the sum of $2,750, as damages for the loss of life of said Peter Swanson, by reason of the sinking of the Steamship Saginaw through a collision with the Hamilton, May 5th, 1905, off Winter Quarter Lightship, on the Atlan-

tic coast (folio 1159). The District Court found both vessels in fault for the collision, and on this issue, neither side appealed.

The Saginaw was a total loss, and its owner did not take part in the appeal, which the Old Dominion Company took to the Circuit Court of Appeals. On this appeal the only questions raised were the jurisdiction of the Court to award damages for loss of life of those on the Saginaw, and as to the amounts thereof.

The District Court had reduced the allowance on the Swanson claim from $4,250, as made by the Commissioner, to $2,750, and Swanson also appealed, from this reduction.

Peter Swanson was returning from Norfolk, Virginia, to Philadelphia, as a passenger on the Saginaw. (District Court Opinion, fol. 1135, Bristow, fols. 684, 687), His leg had been injured by the breaking of a rope on a previous trip, and he was returning to his home in Philadelphia after being discharged from the hospital in Norfolk, as cured. He was walking with a cane or crutch, and occupied a berth in the saloon. He was last seen about half-past eight in the evening before he retired; was not seen after the collision; was not in either of the life boats that were launched, and was not among those rescued. (Bristow, fols. 687, 692; Arquinchona, fols. 711, 713, 716, 717). He was undoubtedly drowned in his cabin. He was about 42 years of age, left a widow, the claimant, Mary Swanson, and a boy 12 years old, of whom he was the sole support. He was a shoemaker by trade, and gave almost all his money to his wife, who was not obliged to work while he lived, and whom he supported nicely. The claim was originally filed by Mary Swanson as widow and administratrix, and afterward amended so as to be filed as widow alone.

There was a dense fog at the time of the collision. The Saginaw was held at fault for excessive speed.

and failure to stop and reverse when hearing a whistle ahead, and the Hamilton was held in fault for excessive speed.

Both vessels were owned by corporations organized and existing under the laws of the State of Delaware (fol. 532).

Laws of Delaware, V. 13-14, 1887-6, pp. 28, 29, provide as follows:

Section 2. "Whenever death shall be occasioned by unlawful violence or negligence, and no suit be brought by the party injured to recover damages during his or her life, the widow of any such deceased person, or if there be no widow, the personal representatives, may maintain an action for and recover damages for the death thus occasioned."

This Act was amended March 9th, 1901, so as to include widower.

Opinion, folios 530-531.

The statute is quite similar to that of New York and New Jersey and other States.

On these facts, both lower courts held that the Delaware Statute giving a right of action for death by negligence, applied to the claims for loss of life of those on the Saginaw, due to collision on the high seas, arising from tort, that the deaths occurred on Delaware territory, and that the Court had discretion to permit the amendment of the Swanson claim from one made by her as widow and administratrix, to one made by her as widow alone, to conform to the Delaware Statute, and that even before amendment, the claim was valid, under the statute. The awards made by the District Court were affirmed.

After the decision by the Circuit Court of Appeals, the claim of Lawson, as administrator of Page, was settled by the parties, so that that claim is not before this Court.

POINT I.

The Decision of this Court is not needed to clarify the law as expounded by the lower courts in this case, for the reason that a careful review of the authorities shows that the courts below had jurisdiction to award damages for the loss of Swanson's life on the Saginaw.

We assume that unless there is confusion in the law, as expounded by the lower courts, or error in the decision of this cause, that the application for a certiorari can properly be denied. A brief resume will therefore be made of the cases already decided, on claims for loss of life by collision on the high seas, as we conceive that to be the principal question on this application. On this question, the Old Dominion Company relied principally upon the fact that the claims for loss of life were made by those who had no contract with the Hamilton, and were therefore based on tort, in order to distinguish this case from the case of *International Navigation Company against Linstrom*, and the case of *La Bourgogne* hereafter cited, both of which were decided in favor of the jurisdiction in the Second Circuit.

This aspect of the question was disposed of against petitioner's contention by this Court, in the case of the *Albert Dumois*, 177 U. S., 240, 241, 257. Although the collision in that case occurred in the Mississippi River, the same reasoning must be applied as in the case at bar. The representatives of the passengers lost on the steamer *Argo* recovered their full damages against the *Dumois*. In that case, the negligence and damages occurred in state waters, whereas in this case, they occurred on State territory; that is, Delaware vessels. Both were tort cases, independent of contract. No reason exists for distinction. There certainly is no reason why one should be able to commit a tortious

act with impunity on a vessel on the high seas, in case no element of contract exists, and should be held liable in case a contract did exist. If actions against vessels for deaths at sea were actions on contract, the locality of the death might be immaterial as the law of the place of the contract might govern.

No authority in point has been cited by petitioner in support of this claim.

In *Lindstrom vs. International Navigation Company*, 117 Fed. Rep., 170, a steerage passenger was swept from the deck of a steamer owned by a New Jersey corporation, while it was upon the high seas, by the negligence of the vessel, which was registered in New York.

Judge Thomas held that under the New York statute giving a right of action for death, the personal representatives had a right to damages for the loss of life, since the tortious act was committed on board the vessel, and hence within the territory of the State, though the injury was consummated in the high seas.

The opinion of Judge Thomas is a most instructive discussion of the law, and a careful examination of it will convince the reader.

The decision was reversed by the Circuit Court of Appeals, for the Second Circuit, in 123 Fed. Rep., 475, on a point not raised before Judge Thomas. That court held that the vessel was a portion of the territory of New Jersey, because it was owned by a New Jersey corporation, even though registered in the port of New York, and that the suit had not been begun within the year required by the New Jersey statute, allowing damages for death, and therefore must fail. In reversing the case, the Court found that the vessel was a part of the territory of New Jersey.

The decision was not based on any privity of contract between the claimant and vessel, and Judge Wallace said, on page 476:

> "The territorial sovereignty of a state extends to a vessel of the state, when it is upon the high seas, the vessel being deemed a part of the territory of the state to which it belongs, and it follows that a state statute, which creates a liability or authorizes a recovery for the consequences of a *tortious act*, operates as efficiently upon a vessel of the state, when the vessel is beyond its boundaries, as it does when it is physically within the State."

It will be observed that the Court expressly extended the rule to a *tortious act* and fixed the location of that act as a test of the jurisdiction. Indeed in the case of torts in Admiralty, the location always fixes jurisdiction, and in the proceeding at bar there is no difficulty because both the negligent act and its consummation took place on Delaware vessels.

In *La Bourgogne*, 139 Fed. Rep., 433, decided by the Circuit Court of Appeals for the Second Circuit, the Court held that where the law of France allowed a recovery for loss of life, that the personal representatives of those lost on the French vessel, by reason of negligent collision, could recover damages for the deaths, and that the territorial sovereignty of France extended over the vessel, which, upon the high seas, was a part of the territory of France. The claimants in that case, dissatisfied with the limitation of liability allowed the vessel, have obtained a writ of certiorari from this court, but no writ has been obtained, so far as counsel have been informed, on behalf of the vessel.

In the case at bar, the decision of the Court of Appeals refers to this certiorari in the *La Bourgogne* case as a possible reason why this case might be taken up. It might be, however, that this point would not be raised at all in the *La Bourgogne* case in this court, so that this case should stand on its own bottom.

The opinion of Judge Adams, in the case at bar, found in 134 Fed. Rep., 95, 99, is also a learned *resume* of the law on this subject, and worthy of careful examination, citing as it does the authorities supporting the decision, and citing and disposing of the authorities presented in opposition, particularly on the petitioner's theory that there should be an element of contract.

In *McDonald against Mallory*, 77 N. Y., 546, a right of action for damages for a death on the high seas, upon a New York vessel, caused by the negligence of the steamship company, was supported, and the right not based upon any theory of contract, but simply on the ground that the negligent act occurred on New York territory.

The above cases are directly in support of the jurisdiction in the case at bar.

Let us now examine the cases referred to by the petitioner, by reason of which they claim there is not uniformity in the Federal decisions, even where the death occurred within State waters.

Referring to *Welsh vs. The North Cambria*, 40 Fed. Rep., 655, it is enough to say that all that the case held was that the Pennsylvania law did not create a lien on the vessel for death by negligence on the high seas.

The statute of Pennsylvania has been examined, and there is nothing in it about any lien, so that of course there was no lien to enforce. No one can quarrel with this decision, and it has no bearing on the law involved in the case at bar. It is perfectly good law to-day.

Petitioner refers to the case of the *Glendale*, 81 Fed. Rep., 633, and the *Willamette*, 70 Fed. Rep., 975, where the Federal Courts enforced a right *in rem* for death, which was expressly given by a state statute.

The case of the *Dauntless* is also referred to, 129 Fed. Rep., 715 (Circuit Court of Appeals), denying the right *in rem* and reversing the Court below.

which was an action *in rem* on the California statute, giving damages for death.

The Court expressly found that the language of the California statute did not mean that a lien should be given, or an action *in rem* brought to recover damages for death, and placed its decision solely on that ground, referring, with approval, to its former decision in the *Willamette*, 70 Fed. Rep., 874, 878, where it held that under the Oregon statute, a lien and a right *in rem* were expressly given, by the statute.

The Court held that there was jurisdiction to allow damages in the suit *in personam*.

There is absolutely no confusion in these decisions, as might be inferred from the petition for a certiorari herein.

A long line of cases have held that where the death occurred on waters within the jurisdiction of a state, admiralty would inforce the statute, giving damages for death.

The St. Nicholas, 49 Fed. Rep., 671.
Robinson vs. D. & C. Steam Nav. Co., 73 Fed. Rep., 883.
Burrell vs. Fleming, 109 Fed. Rep., 489.
Quinette vs. Bisso, 136 Fed. Rep., 825.

In Alaska Commercial Co. vs. Williams, 128 Fed. Rep., 362, recovery was allowed for the death of a man who was drowned within three miles of the Alaska shore, by the sinking of a schooner, which was wrongfully abandoned either within or without the three-mile limit by the towing vessel. There is absolutely no confusion in the above decision.

We will now examine the cases from which petitioner deduces an alleged wide difference in applying the terms of State statutes where the collision occurred on the high seas.

In the case of *The Robert Graham Dunn*, 70 Fed. Rep., 270, the petition for certiorari herein states

that under the statute of Massachusetts nothing was awarded for the death of persons drowned in collision but compensation was only made for mental and physical suffering before death.

An examination of the Massachusetts statutes shows that in 1895 when the case of The Robert Graham Dunn was decided, there was no general statute in Massachusetts allowing damages for death by negligence, although there were at that time special statutes holding railroads liable for the death of passengers, and street railways liable for death caused by negligence, and several other statutes holding special persons or corporations liable for damages in case of death caused by negligence. There was no statute holding vessel owners liable for such damages. Several of these special statutes are found in the Public Laws of Massachusetts of 1851 and 1855. In 1897, two years after The Robert Graham Dunn case was decided, there was a General Act passed in Massachusetts somewhat similar to Lord Campbell's Act. The Dunn case, therefore, is not at all at variance with the decision in the case at bar, and the similar cases above cited. The case of *Oleson vs. the "Ida Campbell."* District Court of Minnesota, 34 Fed. Rep., 432, decided in 1888, dismissed the libels *in rem*, and *in personam* filed under the Minnesota statutes allowing damages for death by negligence. This death occurred in State waters, and not on the high seas, and although opposed to the decision in the case at bar, it has been overruled by all the later decisions of the Circuit Courts of Appeal in this country on that point, and by the decision of this Court in Albert Dumois, 170 U. S., 240, above referred to. It, therefore, may be disregarded in approaching this case.

Petitioner refers to the *"Jane Gray,"* decided by the District Court of Washington, N. D., in 95 Fed. Rep., 693, as exhibiting a conflict in the law.

Judge Hanford expressly found that the vessel

was an American Schooner of the Port of Seattle, Washington, and that she sank in the Pacific Ocean, apparently on the high seas.

The representatives of the passengers drowned presented their claims for damages for death in the limitation of liability proceedings, which were instituted in the district of Washington.

Judge Hanford states at page 697 that because the common law has been changed by statute in Washington and all the other states, so as to give a right of action for death, the law of the Forum must control in determining the question as to the liability of the owners of a vessel, who are citizens of the United States, for damages caused by their negligence, resulting in death.

It is clear that he did not intend to decide that if the vessel belonged to a country where no right of action was given the law of the Forum would give one; although petitioner seems to have so interpreted it. The case is directly in support of the case at bar. The death occurred on the high seas, on a vessel of the State of Washington, and suit was brought on the Washington statute in the District of Washington, and a recovery was allowed.

The only case which presents the shadow of a conflict in the law involved on this application, is that of *Rundell vs. La Compagnie Generale Transatlantique, 100 Fed. Rep., p. 656*, and when that is carefully examined, it will be seen that that does not really support petitioner's position.

It was a suit based on the death of a passenger of "La Bourgogue" by reason of the collision which is now before this Curt on certiorari to the Circuit Court of Appeals for the Second Circuit. The case came up on exceptions to a libel.

The Court found, on page 656, that the libel did not state that the death had occurred on the steamship "La Bourgogue," but that the plain implication from the libel was, that he was drowned in the high seas, apart from the vessel, and that the locus

of the tort was therefore in the water, and not on the vessel, so that the French law did not apply. This was the first ground on which the Court rested its decision. It went on to hold that the Court could not apply the law of France in that case, but this was evidently based on the fact that it was not alleged in the proceeding that the death occurred on French territory, and so for as it goes beyond, it may be said to be dictum.

The Court admits, on page 661, that if a collision occurred on the high seas between two vessels belonging to the same foreign country, that our courts would be governed by the laws of the country to which they belonged, so that the case cannot be said to be necessarily in conflict with the one at bar, although some of its reasoning may be so The Court deciding the case, by reason of its location, was not familiar with causes of action arising on the high seas, and the case has not been approved, so far as we know, by any decision of the Federal Courts, except that of Judge Townsend in the District Court for the Southern District of New York in "La Bourgogne," which was reversed by the Circuit Court of Appeals for the Second Circuit (Judge Townsend sitting and overruling his own decision), and overruled by Judge Adams in the case at bar.

The Vera Cruz, 10 App. Cas., 59, referred to by petitioner, was simply a decision that an action *in rem* did not lie for death under the special wording of the Admiralty Court Act giving jurisdiction to that court.

The Court intimates that the claim might be allowed in Limited Liability proceedings, and recognizes that the action at law would lie. The collision in this case occurred in English waters.

Monahan vs. Horn, 7 Du Val (Canada), 409, also relied on by petitioner, merely held that an action *in rem* would not lie under Lord Campbell's Act in the Admiralty Court.

In *The Corsair*, 145 U. S., 335, referred to by petitioner, this Court simply decided that a libel *in rem* for death did not lie where the statute gave no lien. The libel *in rem* was amended by joining a personal defendant, but the amendment was not made for more than a year after the death, and this was too late under the state statute.

The Court also decided that the amended libel did not allege the defendant to be owner of the vessel at the time of the accident, and held that under the rules a ship and owner could not be joined in one suit.

There is nothing in the case at variance with the decisions in the case at bar.

So much for conflict of decisions on the questions in this case. There is certainly no such conflict as to embarrass the application of the law, or to cause practitioners any difficulty when the questions arise. The authorities are overwhelmingly one way.

POINT II.

The principles of the law as expounded by this court and the lower courts in other cases, show plainly that the right of action allowed in this case exists.

In the *Lamington*, 87 Fed. Rep., 782, Judge Thomas held where an accident occurred on a British vessel on the high seas, that the British law applied, because the vessel was part of the territory of Great Britain, where it was owned.

In *Crapo v. Kelly*, 16 Wall., 610, it was held that a ship owned in Massachusetts, and on the high seas, was a part of the territory of Massachusetts, and that title to same passed to its owners' assignee in insolvency under the Massachusetts law. The Court said, at page 64:

"We are of the opinion for the purpose we are

considering, that the ship "Arctic" was a portion of the territory of Massachusetts and the assignment by the insolvent court of that State passed the title to her in the same manner and with the like effect as if she had been physically within the bounds of that State when the assignment was executed."

In *St. Clair v. U. S.*, 154 U. S., 134, the Court said, at page 152:

"A vessel registered as a vessel of the United States is in many respects considered as a portion of its territory, and persons on board are protected and governed by the laws of the country to which the vessel belongs."

To same effect *Wilson vs. McNamee*, 102 U. S., 572.

A number of cases were cited by the petitioner in the Court below, but upon examination they proved for the most part to be cases which merely decide that an action *in rem* for death does not lie in the absence of a State statute giving a lien therefor.

Such were the *Alaska*, 130 U. S., 201, where the suit was brought *in rem* when no right *in rem* was given by the New York statute, and where it was admitted that the New York statute could not apply for that reason.

Also the *Harrisburg*, 119 U. S., 199.

POINT III.

Uniformity of decision demands that the decisions in the case at bar be sustained.

The petitioner has argued against the jurisdiction on the ground that uniformity of decision would suffer, if the claims were allowed.

As we have shown, all the authorities bearing on the question have held that the right of action contended for by claimants exists, with the possible ex-

ception of the *Rundell* case, which, as we have seen, is not really in point at all. It is difficult to see how the reversal of the case at bar could make the decisions uniform. It would, on the contrary, overthrow decisions which have been regarded as the law of the land, and are familiar to admiralty practitioners throughout the country.

By treating the vessels as part of the States, in which they are owned, an absolute rule of uniformity is had. Likewise, if claims for death are to be allowed when a contract exists, and not allowed where it does not exist, it would seem that petitioner's argument answers itself.

Furthermore, no reason exists why a vessel should be allowed to run down another, and to drown passengers on the high seas with impunity, although it could not cause the death of its own passengers without liability.

The right of action provided by the Delaware statute is not founded on contract, but on tort, as appears from its wording.

POINT IV.

Reason and justice demand the relief afforded to claimants by the lower courts.

England and the States of this country have recognized the injustice of the common law, which afforded no remedy for death by negligence, and have enacted statutes granting such a remedy. No reasonable arguments have ever been made against such statutes. Natural justice demands that when a tortious act produces damages, a tort feaser shall pay.

As held by the Circuit Court of Appeals in this case, it was not the intention of the limited liability act to enable vessel owners to force claimants into the admiralty, and thus avoid claims which are valid and enforceable at common law. The intent was to limit the liability; not to destroy it. There

is no pretense that if suits had been brought for these deaths in the Courts of Delaware, plaintiffs would have succeeded, but by the action of the petitioner in this proceeding, they are enjoined from prosecuting their claims in the home forum, and compelled to present them to the District Court.

It may well be held that a limited liability proceeding is not strictly an admiralty proceeding, but a statutory proceeding, of which the District Court is given jurisdiction.

It may be that claims for damages done by ships to objects on the land could not be the subject of independent libels in admiralty, but would properly be presented in this statutory proceeding.

Claimants should therefore not be deprived of the clear rights which they have against the petitioner in the state courts.

POINT V.

Further delay would be a great hardship to the claimants, and the Petition for Certiorari should be denied.

The claimants, Mary Swanson and her child, were absolutely dependent upon the deceased, Peter Swanson, for support A similar state of affairs exists with reference to at least some of the other claimants. The deaths occurred in May, 1903; it is now almost three years and a half since that time, and great hardship has resulted.

It is respectfully submitted that the petitioner has had its full day in Court, and ought now to make the compensation awarded.

Respectfully submitted,
HUNT, HILL & BETTS,
Proctors for Mary Swanson,
Claimant-Appellee.

GEO. WHITEFIELD BETTS, JR.,
Of Counsel.

Dated October 10, 1906.

INDEX

		PAGE
	Statement of facts	1
	Questions here raised	5
I.	The Delaware statute does not apply	5
	A. No State of the Union can bind vessels at sea.	6
	fiction of territoriality of vessels	7
	application of "law of the flag"	8
	previous decisions as to death at sea	11
	criminal jurisdiction on high seas	12
	case of Crapo *v.* Kelley	14
	B. Maritime law must be uniform	16
	case of Workman *v.* Mayor	19
	decisions in case of death when *within* State waters	20
	when on high seas	21
II.	Representatives of *Saginaw's* crew cannot recover in full against the *Hamilton*	22
	case of mate Goslee	22
	owners' maritime liability to crew	26
	rule in the *Osceola*	26
	application to collisions with mutual fault	27
	rule in the *City of New York*	27
III.	Decrees below contrary to maritime law	28
	dictum of Bradley, *J.*	29
IV.	The loss of life claims should be rejected	30

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907. No. 71.

IN THE MATTER

OF

The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton*, for limitation of liability,

Petitioner-Appellant,

PRIMUS GILMORE, *et al.*,

Claimants-Appellants.

BRIEF FOR THE OLD DOMINION STEAMSHIP COMPANY, PETITIONER.

STATEMENT OF FACTS.

This proceeding comes to this Court on a writ of *certiorari* from this Court to review a decree of the United States Circuit Court of Appeals for the Second Circuit affirming a decree of the United States District Court for the Southern District of New York, entered herein August 10th, 1905.

On May 5th, 1903, a collision occurred on the high seas near Winter Quarter Lightship between the steamship

Hamilton, belonging to this petitioner, and the steamship *Saginaw*, of the Clyde Steamship Company. The *Saginaw* was sunk; her chief mate, steward, assistant steward, stewardess and some of her passengers were drowned.

Proceedings to limit the liability of both vessels were instituted in the District Court of the United States for the Southern District of New York. Claims were made for the loss of the *Saginaw* and her cargo, for loss of life and for personal injuries and for loss of personal effects.

The District Court held both vessels in fault, but permitted their owners to limit their liability, and provided for a reference to fix the amount of damages.

Record, fols. 170–182; reported 134 Fed. Rep., 95.

The District Court found that a dense fog had prevailed for several hours before the collision. It condemned the *Hamilton* for her excessive speed, but held that the other faults charged against her had not been proved. It found that prior to the collision the *Saginaw* had been running for more than 20 miles in a dense fog under full speed bells, and that although there was some slight reduction of speed near the point of collision, it was then at least six knots, and hence excessive. The *Saginaw* was held in fault also for failing to observe article 16 of the Regulations for Preventing Collisions at Sea, as after hearing the whistles of the *Hamilton* nearly ahead, she kept on under the same speed. The master had several times left the pilot-house, leaving the mate in charge.

Record, fol. 176; 134 Fed. Rep., 95–98.

The Court also held that both vessels, being owned by Delaware corporations, were a part of the territory of that State; also that, under the statute of the State of Delaware, the claimants had a right of recovery in the admiralty for loss of life of those from the *Saginaw* who were drowned

in the collision, although as against the *Hamilton* there was no element of contract involved, all the claims being by persons who were on the *Saginaw*. Any recovery necessarily was for the *tort* of the *Hamilton*, as an outside colliding vessel. The Court declined to distinguish such a case of *tort* from the claim by a passenger against the carrying ship.

The matter was referred to a Commissioner under interlocutory decree.

Record, fols. 183–185.

There remained pending before the Commissioner only certain claims for loss of life, all filed against the *Hamilton*.

The Commissioner, in his report, found that "in assessing damages and in passing upon the question of contributory and imputed negligence the law to be applied" was the law of Delaware, and he relied upon the mortality tables in estimating the expectations of life of the several decedents. The report came on exceptions to the District Court.

These exceptions were overruled by the Court, but the amounts awarded to the claimants by the Commissioner were somewhat reduced.

The following are the claims here material:

Swanson—passenger	2,750
Goslee—chief officer	6,000
Morris—chief steward	3,000
Sarah Elam—stewardess	1,500

Record, fols. 361–380; 139 Fed. Rep., 906.

In its opinion on the exceptions to the Commissioner's report, the Court held:

1) That in reaching the amounts to be awarded as damages the measure of recovery should be ascertained

according to the law of the place, *i. e.*, Delaware, and that courts in admiralty must determine the amounts in practically the same way as juries would reach them.

Record, fol. 374.

2) That Goslee, the mate of the *Saginaw*, was not personally negligent.

3) That the others of the crew of the *Saginaw* who lost their lives were not so identified with their vessel as to prevent their representatives from recovering full damages against the *Hamilton*.

The finding of "both to blame" was accepted by both parties and the Clyde Steamship Company did not appeal.

From the final decree of the District Court, the Old Dominion Steamship Company appealed to the Circuit Court of Appeals for the Second Circuit, setting forth in its notice of appeal that it desired to review only the following questions:

The action of the Court in sustaining claims against the petitioner on behalf of certain persons alleged to have been members of the crew and passengers on the *Saginaw* for damages by death from collision on the high sea.

The findings, conclusions and orders of the Court regarding such claims, including the overruling of petitioner's exceptions to the report of the Commissioner.

Also as to the several sums adjudged by the Court to the various claimants for loss of life.

Record, fols. 391-392.

The damage claimants also appealed from that part of the decree which reduced the awards made by the Commissioner.

The Circuit Court of Appeals affirmed the decision of the District Court, without costs, and on July 7th, 1906, entered its order for the issuance of its mandate.

Thereupon this Court granted a writ of *certiorari* on the application of the Old Dominion Steamship Co.

The questions presented for the consideration of this Court are:

FIRST.—Does the Delaware statute apply to a claim for death on the high seas arising purely from *tort* in proceedings in Admiralty?

SECOND.—Can the representatives of the deceased members of the crew of the *Saginaw* recover their claims in full against the *Hamilton*?

I.

THE DELAWARE STATUTE DOES NOT APPLY TO A CLAIM FOR DEATH ON THE HIGH SEAS ARISING PURELY FROM TORT, IN PROCEEDINGS IN ADMIRALTY.

The Old Dominion Steamship Company is a corporation of the State of Delaware, and the Clyde Company is also a corporation organized under the laws of the same State. The State of Delaware gives a statutory remedy for loss of life by negligence.

The collision occurred on the high seas. The loss of life claims here represented are all by persons on the steamer *Saginaw*.

All these claims are represented by administrators appointed by the courts of Virginia and Delaware, and are filed against the Old Dominion Steamship Company alone, although the decedents were all of them on the *Saginaw*.

This wholly removes every element of contract, since no contractual relation existed between the *Hamilton* and persons on board the *Saginaw*. Any recovery therefore which these persons may secure must necessarily rest

upon the theory of a maritime tort, as against an outside colliding vessel.

The proposition here raised is different from those previously decided, and consists in this: "Is there a recovery in admiralty for loss of life on the high seas, where there is no element of contract involved?"

A. No State can create a liability for *torts* as to vessels on the high seas.

It is important to note the distinction between claims in contract by passengers and others against their carriers and, on the other hand, claims against a colliding steamer for pure tort. In the contract relations of vessel, crew and passengers, and even of cargo, courts regard the law of the vessel's flag, as an element or condition of the contract—a tacit implication that, as to all matters not dealt with specifically, the parties have agreed to be bound by the law of the flag.

In the relation which springs out of tort, however, there is no basis for saying that the parties have impliedly consented to be bound by the law of any particular State. As a consequence their rights and liabilities are to be determined by the general principles of maritime law as administered in our admiralty courts. If the *Hamilton* had belonged in one State, the *Saginaw* in another and the deceased in still another State, how could the law of any particular State more than another have precedence and a controlling influence? On the contrary, there is no presumption that the relations of the parties are to be fixed by the laws of any one State when an injury accrues on the high seas through a pure marine tort.

"In cases arising in tort upon the high seas the United States District Court sitting in Admiralty cannot enforce the law of France even if it in terms applied to the case * * * but that such cases must be adjudged and governed by the general maritime and admiralty law

as understood and administered by the United States Courts."

Rundell *vs.* Compagnie Generale Transatlantique [94 F., 366; aff., 100 F., 655].

The origin of the fiction that a merchant ship may be regarded as a floating portion of a country; or, as the doctrine is sometimes expressed, that they are a continuation or prolongation of the national territory, is as recent as 1752. Modern writers treat this fiction as having only a limited application.

Hall, in his last edition (A Treatise on International Law, Oxford, 1904), says:

"It does not appear that the doctrine of the territoriality of vessels can be traced further back than to the 'Exposition des Motifs' put forth in 1752 by the Prussian government in justification of its behavior in confiscating the funds payable to its English creditors in respect of the Silesian Loan. In that repertory of bad law it is said that 'the Prussian vessels, although laden with property belonging to the enemies of England, were a neutral place, whence it follows that it is exactly the same thing to have taken such property out of the said vessels as to have taken it upon neutral territory.' The assertion, of which the object was to produce the impression that the English, in acting upon an ordinary usage, had been guilty of illegal conduct, was supported by no reasoning. In its origin, therefore, the doctrine had just so much authority as belongs to a legal proposition laid down by an advocate whose law is notoriously bad. A few years later the idea reappears in Vattel, but he uses it only incidentally to explain a particular custom, and evidently without adequate consideration of its scope and bearings. Children born at sea, he says, if born in a vessel belonging to the state of which their parents are subjects, 'may be considered to be born within the territory, for it is natural to regard the ships of the nation as parts of its territory, especially while they navigate unappropriated waters, since the state preserves its jurisdiction over them. * * * The territoriality of a vessel is a metaphorical conception; and before a metaphor can be employed as an operative principle of law, it must be proved to have been so adopted into law as to render its use necessary, or at least reasonable'" (pp. 249, 250).

A reference to the *Exposition des motifs* shows that the text in question was merely an argument in support of the proposition "Free ships make free goods."

The whole passage is as follows:

"It is incontestable that enemies, according to reason and even to the law of nations, are in safety one from another when they meet in a neutral place, and that consequently one enemy cannot attack another enemy in such a place nor seize any of his effects. Now, the Prussian ships, had they been freighted with effects belonging to the enemies of England, are a neutral place; thence it follows that it is all one to carry off such effects from such neutral ships as to carry them off from a neutral territory. This point of the law of nations sees itself confirmed by this remarkable maxim expressly established in the treaties between England and Holland and between England and France that *free ships render the merchandise on board free.*"

From trans. in 1 Magens on Ins., 436, 455.

The doctrine of "territoriality" is rather a limit on rights of search and protection against aggression than one that confers new rights of action for tort.

Thus Walker in his Science of International Law, says:

"Within territorial waters, therefore, the merchantman may well be subjected to the rule of foreign law within such limits, a right of search may be exercised at all times by the proper local officers, whether of police or of the customs. But over a merchantman on the high seas no foreigner can advance any claim of jurisdiction which can derogate from the initial natural right of the native sovereign, unless it be founded on the common police of the ocean, or in the requirements of self protection" (pp. 130, 131).

The theory applicable to merchant vessels must be one of contract. It was early settled in England that the law of the flag determines the power of the master to deal with cargo, and measures the scope of the master's authority to bind the owner by his contracts.

Lloyd *vs.* Guibert, Law Reports, 1 Q. B., 115 (1865).

This was further amplified as to cargo in 1882.

In the case of *The Gaetano and Maria*, L. R., 7 P. D., 137–146, Justice Brett (Lord Esher) said:

"The goods are put on board an Italian ship, and the person to exercise authority is an Italian master. Is the authority of the Italian master to depend upon the law of the country of the shipper, when that law is contrary to the law of his own country? Why should it? Is the master of a ship to be taken to know the law of the country of each shipper of the goods which are put on board his ship? It would be strange if that were so. If a merchant puts his goods into the power of an Italian master on board an Italian owner's ship, what is the meaning of the transaction, but that he is to deal with the goods as an Italian master is to be taken to deal with goods on board his ship unless he is bound to another mode? Upon principle it seems to me that he who ships goods on board a foreign ship, ships them to be dealt with by the master of that ship according to the law of the country of that ship, unless there is a stipulation to the contrary. Therefore, when these goods were shipped on board the Italian ship, it seems to me that by the contract of the parties arising out of that shipment it must be taken that the goods were to be dealt with under circumstances which might arise and which are generally considered likely to arise by all maritime countries, in the way in which that master would deal with the goods according to the law of Italy, unless there was some stipulation to the contrary."

In making a contract, or in entering into business relations with a ship, outside parties are presumed to regard the laws of some place. Obviously, to infer that they had regard to the law of the flag is natural and reasonable as underlying the express terms of a contract made in ports of refuge or in places out of the usual course of voyage. Hence, at the Antwerp Conference of 1887 it was decided that the law of the flag determines the responsibility of the owner for contracts entered into by the master. Other contractual relations have also been referred to the same law.

But the fundamental distinction between wrongs com-

mitted on the high seas, and contracts entered into with the ship is obvious. In France, the law of the flag has sometimes been applied to torts on the high seas, but generally for the purpose of imposing on foreign vessels a greater liability (for example £8 a ton) than is given by the law of France.

Independent of precedent, it is plain that the liability for wrongs, and especially for causing death, is to be determined in admiralty by the court administering the law of the forum. No State can extend its laws over the ocean. The Federal laws alone, and the maritime jurisprudence administered by the Federal courts must decide the liability for wrongs committed outside of territorial waters. Otherwise, in the case of a collision with a Spanish vessel, and one, for intance, from Portugal, this court would be called on to apply on the high seas a system of possible liability entirely foreign to our jurisprudence. Such a doctrine would go so far as to require it to be imposed even if the supposed collision occurred more than a league from Sandy Hook.

The doctrine that merchant ships are part of the territory, if applicable to collisions, would also govern salvage on the high seas. Such attempts to impose foreign laws have often been made, but have never been successful in the United States Courts. The *Edam*, 13 F. R., 135, 139.

It is also clear that the territorial fiction depends on contracts, because publicists recognize that it is only when the crew are on board that the doctrine of territoriality applies. Once the contracting members of the ship's company leave the vessel the fiction vanishes (Woolsey, International Law, 6th Ed., p. 72).

Statutes providing for the survivorship of rights of action, and recovery in case of loss of life, have been enacted in varying forms, not only by the States of the Union, but also by foreign countries, with which the United States

has intimate relations—especially by England and the Canadian provinces. The system of law on the continent of Europe in some form also gives a recovery for loss of life. Yet in no case have the courts of Great Britain or the United States regarded the law of the flag upon the high seas as authorizing such a recovery in the admiralty courts. Even in Canada the admiralty has no jurisdiction for loss of life (Monaghan *v.* Horn, 7 Du Val [Supreme Court, Canada], 499).

The same rule was reached in England (notwithstanding Lord Campbell's Act) that admiralty has no jurisdiction for loss of life.

The Vera Cruz, 10 App. Cas., 59 (1884).

The very absence of precedent on this point is the strongest argument against the existence of such a remedy in admiralty.

In the *Corsair*, 145 U. S., 335 (1891), the collision occurred in the Mississippi River, about ten miles above the City of New Orleans. The libel *in rem* was followed by an amended libel *in personam*, but both libels were dismissed, upon the ground that the statute of Louisiana did not authorize an admiralty suit *in rem*, and the subsequent amendment to the libel *in personam* was improper, as the libel did not aver facts sufficient to establish a cause of action.

While it is true that for matters of internal commerce the States are regarded as foreign, they are not so considered with respect to maritime and sea interests, except where contracts are concerned. Domestic vessels can carry only one flag. By the Constitution, all maritime and admiralty jurisdiction is conferred on the Federal Government; so that even in commercial contracts the

Federal court is in no respect bound by the commercial laws of the different States.

For example, the decisions of the State of New York allow negligence clauses in the contracts of common carriers, and this, before the Harter Act. Yet no Federal court has felt bound to follow the laws of New York in regard to any vessel documented in this port, whether within or without the territorial jurisdiction of this State. The fiction of exterritoriality, therefore, has less application to the ships of the different States of the Union than might possibly be accorded to it, when dealing with the ships of a country wholly foreign.

Any *crime* committed on board the *Hamilton* on the high seas, would have been exclusively cognizable under the statutes of the United States (U. S. Revised Stat., Title 70, Chap. 3, also §§ 629, 711). In case of murder on the *Hamilton*, the indictment would have to charge the venue as "in and upon the high seas, *out of the jurisdiction of any particular State*," following the precise words of § 5339 of the Revised Statutes. St. Clair *vs.* United States, 154 U. S., 134.

Although this title of the Revised Statutes defines many felonies, it makes no mention of such offenses as gambling, lotteries, or the sale of liquors on the high seas. Could the legislation of Delaware, or of any State, supplement this omission, by enacting penalties for such acts committed on the high seas, but on vessels owned by its citizens?

The Statute here in question is not by its terms applicable to vessels at sea. It is quoted in the opinion of the District Judge. The text is:

"Whenever death shall be occasioned by unlawful violence or negligence and no suit be brought by the party injured to recover damages during his or her life, the widow or widower of any such deceased person, or if there be no widow or widower, the personal representa-

tives, may maintain an action for, and recover damages for the death and loss thus occasioned."

Act January 26, 1886, as amended March 9, 1901.

Record, p. 107.

There is nothing in this language showing an intent by the State of Delaware to assert jurisdiction outside its own territorial limits. Such acts of a State are to be presumed to be limited within its power of legislation, which in the words of Marshall, *C. J.*, is "coextensive with its territory." U. S. *vs.* Beavan, 3 Wheaton, 336, 386.

Suppose that the Legislature of Delaware had anticipated this precise case, and had passed a statute designed to meet it, somewhat in these terms:

Whenever any steam vessel owned by citizens of this State shall be negligently navigated on the high seas, so as to collide with any other ship or vessel, and thereby cause death to any person, whether passenger, officer or seaman, the personal representatives of such deceased person may maintain an action therefor, against any such steam vessel or against the owner or master thereof, which shall have caused such loss of life.

Is there any question that such attempted legislation would be unconstitutional and void? How then can the State accomplish by indirection what it could not do by express legislation?

The real basis for the fiction of the territoriality of merchant ships in time of peace rests in the supposed power of a country to make laws to bind its own citizens abroad when they may come to be judged by the courts of their own country (Story, Conflict of Laws, 8 Ed., Secs. 21, 22; Regina *v.* Keyn, 2 Exch. D., 63). By virtue of this power, a *foreign* State, like France, could impose on its citizens abroad the liability to pay damages for death occurring on the high seas, and enforce such right

in the courts of France. Whether our Federal courts would enforce this right depends on considerations of the nature of the liability thus imposed, obligations of comity, and the relation of such a foreign right to our entire system of maritime jurisprudence.

But this argument entirely fails in the case of one of the States of the Union, which has ceded away all such rights to bind its citizens on the high seas. It cannot, therefore, claim that, on the unenclosed waters of the ocean, vessels of the United States, subject to the Federal laws, are under the domain of any suppletory State legislation as to maritime torts.

The law of the sea as to crimes, and equally as to torts, is exclusively as prescribed by the legislation and decisions of the Federal Government, and cannot be a medley formed by the maritime laws of the Union, as pieced out by scraps of legislation by the State of Delaware.

The judgment in Crapo *v.* Kelley, 16 Wallace, 610, sustained a title derived from the insolvency laws of Massachusetts as operative on a New Bedford ship, then on the high seas, so as to prevail over an attaching creditor in New York. This, however, was merely as to the tranfer and devolution of property. This Court discriminated the cases of admiralty jurisdiction which are no longer under the power of Massachusetts. This Court has held that Massachusetts remains a sovereign State as to rights of property and as to regulating local fisheries (Manchester *v.* Mass., 139 U. S., 240), but not as to maritime *torts*.

Referring to the constitutional grant, Justice Hunt said:

" Except for the purposes and to the extent to which these attributes have been transferred to the United States, the State of Massachusetts possesses all the rights and powers of a sovereign State. By her own consent, as found in Article I. of the Constitution of the United States, she has abandoned her right to wage war, to coin money, to make treaties, and to do certain other acts

therein mentioned. None of the subjects there mentioned affect the question before us. The third article of that instrument extends the judicial power of the United States 'to all cases of admiralty and maritime jurisdiction.' This gives the power to the courts of the United States to try those cases in which are involved questions arising out of maritime affairs and of crimes committed on the high seas. To bring a transaction within that jurisdiction, it must be not simply a transaction which occurred at sea, as the making of a contract, but in which the question itself is of a maritime nature or arises out of a maritime affair, or it must be a *tort* or crime *committed on the high seas.* Over such cases the United States courts have jurisdiction; that is, they are authorized to hear and determine them. No rule of property is thereby established. This remains as it would have been had no such authority been given to the United States court" (16 Wall., pp. 623, 624).

The evident tendency of the decisions, and weight of authority is that cases of tort arising upon the high seas, in the admiralty courts of the United States, will be governed by the law of the forum, which is the general maritime law as administered in these courts.

The Scotland, 105 U. S., 24.
The Belgenland, 114 U. S., 355.
The Brantford City, 29 F., 373.

It is important to note that the cases cited to sustain the present claimants are those in which the relation subsisting between the injured person and the ship was a contractual relation, that is, the claimants (or the persons whom they represented) were either passengers or members of the crew. In the *Harrisburg*, 119 U. S., 199, the decedent was a member of the vessel's crew. The same was true in the suit for injuries which gave rise to the dictum in the *Lamington*, 87 Fed. Rep., 752. In McDonald *vs.* Mallory, 77 N. Y., 572, the decedent was a fireman on the steamer. In Rundell *vs.* The Compagnie Générale Transatlantique, 97 Fed. Rep., 366, and in Lindstrom *vs.*

International Navigation Company, 116 Fed. Rep., 172, the rights under consideration were those of passengers proceeding against their own carrier.

Although the language of the Court of Appeals in the latter case is stated broadly, the dictum of the Court must be limited to the special facts under which the liability arose.

In the *Alaska* case alone [130 U. S., 201] was the question of tort involved. There a New York pilot boat was run down by a British steamer on the high seas and pilots on board the pilot boat were drowned. Recovery was sought against the steamer *in rem* under a New York statute permitting the survival of death claims. It was held that there could be no recovery for the loss of lives.

B.—The Maritime Law must be Uniform.

Under the common law there was no survival of actions for injuries resulting in death. By Lord Campbell's act this rule of the common law was changed, although it was later decided that Lord Campbell's act had no application whatever in the Admiralty Law (*The Vera Cruz*, 9 P. D., 88; 10 App. Cas., 53). Our Courts have also declared that in the absence of a statute changing it, the rule in admiralty is the same as provided at the common law (*The Harrisburg*, 119 U. S., 199).

If, therefore, one State should enact that death claims should survive, and a recovery should be sought in the Admiralty Court sitting in that State for loss of life on the high seas through a marine tort under the doctrine of the lower courts, a suit would lie; while if like redress be sought in a State which had passed no such law, it would not be granted. The relief given in death cases in admiralty would, therefore, be one thing in one State and another thing in another State.

In Crapo *v.* Allen, 1 Sprague, 184, Sprague, District Judge, said:

"I cannot think that for a transaction on the high seas a personal suit in admiralty may be maintained in one district of the United States and not in others. * * * Such an incongruity is inadmissible."

Next to the natural justice of its principles, the highest value of maritime law consists in its uniformity and general acceptance. We are not dealing with municipal law nor with general commercial law not maritime, both of which are prescribed and administered concurrently by the State and Federal legislatures and courts, but we have to deal with that which relates exclusively to the maritime law and the admiralty jurisdiction. That law is not subject to the change or modification of capricious State legislatures.

"As a general proposition a State of this Union has no power to affect the law maritime either by addition, subtraction or alteration. To acknowledge the authority of a State of this Union (not sovereign in its power over commerce) to change in any particular the maritime law would be in the end to destroy that law as a system of jurisprudence, by subjecting ships of commerce to a different law in every American port in which they might enter." Hughes, *J.*, in *The Manhasset*, 18 F., 918, 922.

Indeed, one of the controlling reasons for conferring on the general government the exclusive jurisdiction of all admiralty and maritime causes was to secure the great benefits which must inevitably result from uniformity in the maritime law.

A State cannot, therefore, destroy the symmetry of that law by creating maritime rights or conferring jurisdiction in any particular upon an admiralty court.

"The right of an administrator to damages for injury to his intestate when alive is not a maritime right and is unknown to the maritime law. The right of action to recover such damages does not belong under the admiralty

jurisdiction to an administrator, and I think cannot legally be sustained in an admiralty court."

The Manhasset, 18 F., 918, 923.

"The decisions of the District Courts respecting the subject are not harmonious. In *The Sylvan Glen,* 9 Fed. Rep., 335, and *The Manhasset,* 18 Fed. Rep., 918, the State statutes were denied effect in the admiralty. This view is also supported by the judgment in *The Vera Cruz,* L. R., 10 App. Cas., 59. In other instances the question has been decided differently."

Welsh *v. The North Cambria,* 40 F. R., 655, 656.

And also:

"The States have no power to interfere with the admiralty system of laws; they can add nothing to it, nor take anything from it. The subject lies within the exclusive domain of Congress."

Id., 655, 656.

"The maritime law deals largely with interstate and international rights and relations. The Constitution, in conferring upon the Federal courts exclusive jurisdiction of admiralty and maritime causes, manifestly designed to provide for a single harmonious national system of maritime law. To accomplish this it confines its administration to the national tribunals alone. * * *

No such national system could exist if its principles and rules of decision were subject to the legislation of 44 different States. Instead of one system, we should have 44 or more State systems, and no strictly maritime law at all, save what each State might chose to leave standing. Such a condition would be one of chaos in our international relations, and full of confusion and complexity as between the States. The inference is that the Constitution designed to avoid precisely these difficulties. Nor is it reasonable to suppose that the Constitution designed to permit State legislation to prescribe the rules of law by which the Federal Courts should adjudge causes *in rem,* when it expressly withdrew from the State Courts all cognizance of such causes."

The *Lyndhurst,* 48 F. R., 839, 841.

Also:

"* * * I doubt whether it is competent for State legislation to change the maritime law or the rules of decision to be applied by courts of admiralty in the administration of that law further than by the mere establishment and annexing of a lien to marine contracts or torts, which liens courts of admiralty alone may recognize and enforce."

Id. 841.

The danger to the uniformity of the admiralty law by allowing admiralty courts to follow the jurisprudence of the States has been well set forth by Mr. Justice White in Workman *v.* The Mayor, etc., 179 U. S., 552, 558:

"The practical destruction of a uniform maritime law which must arise from this premise is made manifest when it is considered that, if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of State courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would necessarily be one thing in one State and one in another; one thing in one port of the United States and a different thing in some other. As the power to change State laws or State decisions rests with the State authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrong done instead of being general and ever abiding, would be purely local—would be one thing to-day and another thing to-morrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent. And the principle by which the maritime law would be thus in part practically destroyed would besides apply to other subjects specially confided by the constitution to the Federal Government. Thus, if the local law may control the maritime law, it must also govern in the decision of cases under the patent, copyright and commerce clauses of the constitution."

There is no uniformity in the federal courts at present in dealing with death in the admiralty.

Where loss of life occurs *within* State waters, the federal decisions in the lower courts are irreconcilable.

In the Third Circuit, it has been held that the Acts of Assembly of Pennsylvania do not create a lien for death by negligence upon the high seas, and that as there is no jurisdiction otherwise, no such suit can be sustained.

Welsh *v.* The *North Cambria*, 40 F. R., 655.

The Circuit Court of Appeals for the Fourth Circuit, in The *Glendale*, 81 F. R., 623, held that a State statute giving the right *in rem* against a vessel wrongfully or negligently causing the death of any person (Code Va., Sec., 2902) creates a lien enforceable by a libel *in rem* in the federal courts, if the accident occurs within waters of the state navigable from the sea.

This was also declared in the Ninth Circuit in The *Willamette*, 70 F. R., 974, and The *Dauntless*, 121 F. R., 420 (District Court California), but in 1904, the Circuit Court of Appeals for the Ninth Circuit reversed the *Dauntless* judgment, holding that there was no lien, even under the State statute, and hence that a suit *in rem* could not be maintained.

The *Dauntless*, 129 F. R., 715.

In the Fifth and Sixth Circuits it has been decided that a libel *in personam* may be maintained in admiralty under a State statute like Lord Campbell's Act.

The *St. Nicholas*, 49 F. R., 671.

Robinson *v.* Detroit & C. Steam Nav. Co., 73 F. R., 883.

Burrell *v.* Fleming, 109 F. R., 489.

Quinette *v.* Bisso, 136 F. R., 825.

In the Ninth Circuit, also, in the case of Alaska Commercial Co. *v.* Williams, 128 F. R., 362, it was held, affirming the judgment of the District Court for Division

No. 1 of the District of Alaska, that recovery could be had under the territorial statute of Alaska for the death of a man wrecked within the three-mile shore limit off the coast of Alaska.

Where death has occurred *on the high seas*, there is a wide difference in applying the terms of State statutes.

In the First Circuit it has been held that under the statute of Massachusetts, nothing should be awarded for the death of persons drowned in collision, but that compensation should be made only for their mental and physical suffering before death.

The *Robert Graham Dunn*, 70 F. R., 270.

The Court there said:

"Whether the claims of the deceased seamen are of such a nature as to survive in admiralty is a question that was not raised at the argument, and has not been considered by the Court."

The Circuit Court of Appeals for the Seventh Circuit has held that a suit in admiralty cannot be maintained in a court of the United States, either under the general maritime law or any application of the law of France, to recover damages for the negligent death of a person on the high seas.

Rundell *v.* Compagnie Générale Transatlantique, 100 F. R., 655.

In the Eighth Circuit, in the case of Oleson *v.* The *Ida Campbell* (District Court, Minnesota), 34 F. R., 432, although the general statutes of Minnesota provide that "when death is caused by the wrongful act, or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived," the court dimissed libels both *in rem* and *in personam*, filed by the admin-

istratrix to enforce a marine tort, holding that in case of death from such a tort, the action does not survive in admiralty.

In the Ninth Circuit, in the *June Grey* (District Court, N. D., Washington), 95 F. R., 693, Judge Hanford held that the law of the forum controls in determining the question of the liability of the owners of a vessel, who are citizens of the United States, for damage for negligence resulting in death on the high seas; and that admiralty would enforce such State statutes giving a remedy for death in limited liability proceedings.

The absence of uniformity in the Federal courts at present in dealing with death in the admiralty is clearly set forth in the foregoing cases. Not only is there a wide difference in applying the terms of State statutes where death has occurred *on the high seas*, but also where loss of life occurs *within* State waters, the Federal decisions in the lower courts are irreconcilable.

It is submitted that this uncertainty should be settled by the judgment of this Court.

II.

THE REPRESENTATIVES OF THE DECEASED MEMBERS OF THE CREW OF THE SAGINAW CANNOT RECOVER THEIR CLAIMS IN FULL AGAINST THE HAMILTON.

This point applies to all the damage claimants, here represented, except only Swanson, who was a passenger.

Regarding the claim of Alvin Lee Joseph, as executor of the will of Edward S. Goslee, the chief officer of the *Saginaw,* the Commissioner stated as follows:

"Goslee was a man of 60 years of age and the first officer of the *Saginaw.* He was in vigorous health, a man of good habits, of thrifty disposition, having accumulated

real estate and personal property of the value of $10,000 or $11,000. His wages were $67 per month, including an allowance for board. His expectation of life was 15 years.

"The proctors for the *Hamilton* asked for the dismissal of this claim upon the grounds: 1st, that Goslee, claimant's testator, was negligent; and 2d, on the ground that his estate cannot recover because of the negligence of Tunnell, master of the vessel, and of the other officers concerned in her navigation. I find as a fact that Goslee was not personally negligent and that the only negligence was that of Tunnell, the master of the vessel; and inasmuch as the claim is asserted practically only against the *Hamilton*, the proceeds of the *Saginaw* being so small as to be negligible, I find as a matter of law that the defense is not available agaist the *Hamilton*, even if it could be raised in behalf of the *Saginaw*.

"I find that the claim should be allowed in the sum of seven thousand five hundred dollars ($7,500)" (fols. 347, 348).

The exceptions as to this claim are:

7TH.—For that the said Commissioner erred in finding and allowing the sum of $7,500 to Alvin Lee Joseph, as executor under the will of Edward S. Goslee, deceased, in that said allowance is not warranted by the rules of law applicable to the case; and in that the said damages have not been certainly or definitely proved; especially as to the absence of evidence of the sums received from deceased by his sister, Maggie E. Goslee, who was alleged to be partially dependent on the deceased's earnings; also that said sum is excessive.

8TH.—For that the said Commissioner erred in finding that Goslee, the claimant's testator, was not personally negligent, inasmuch as the evidence before the Commissioner showed persistent violation of law in the navigation of the steamship *Saginaw* in running at full speed for more than thirty miles, before the collision, in a dense fog (as already found by this court), during which time Goslee was in the pilot house and directly in charge of, or in privity with, the navigation of said ship, as is shown by the first deposition of Captain Tunnell (fols. 118–122), also his examination in court November 1, 1904 (fols. 165–170), also by the deposition of Jacobson (fols. 102, 103).

9TH.—For that the said Commissioner also erred in finding that the negligence of the master of the vessel

did not affect the claim of Goslee's estate, inasmuch as he considered that such claim is here asserted practically against the *Hamilton* only. In making this finding and conclusion the said Commissioner did not regard the principle that the *Hamilton's* owners are only liable for a moiety of what would otherwise be the recovery by the *Saginaw's* crew. Inasmuch as Goslee, if surviving, could not recover at all from the *Saginaw* (*The Osceola*, 189 U. S., 158, 175), his personal representative cannot enforce any greater right than could Goslee, had he survived. As any claim against the Clyde Steamship Company by Goslee's estate is therefore invalid and not enforceable, such claim against the *Hamilton* cannot be maintained for its full amount; but the Old Dominion Steamship Company, in any event, could only be made answerable for one-half of any such losses and damages otherwise recoverable herein.

10TH —For that the said Commissioner also erred in assuming from certain mortality tables, which were not proved, that Goslee had an expectation of life of 15 years, since such tables are not regarded as a fair and accepted criterion of damages in the courts of the United States.

Record, fols. 354-356.

The Court below confirmed the Commissioner in his finding that Goslee was not personally negligent, also that the negligence of the master of the *Saginaw* did not affect the claim of Goslee's estate, but reduced the allowance to $6,000 (fols. 375, 378, 139 F. R., 913, 914). The petitioner's assignments of error covering these points are as follows:

"3.—In that the Court also erred in not sustaining the petitioner's exceptions to the allowance of any recovery for Alvin Lee Joseph, as Executor of Edward L. Goslee, chief mate of the *Saginaw*, on the ground of his individual fault in the navigation of that vessel, and in holding that said decedent was free from personal negligence and without complicity in the faults of the navigation of the steamer *Saginaw*.

4.—In that the Court erred also in not sustaining the petitioner's other exceptions to the allowance of any recovery on behalf of said claimant—being the exceptions to the report of the Commissioner, numbered seventh and ninth.

5.—For that the Court erred in sustaining claims on behalf of the crew of the *Saginaw* for the full amount thereof, instead of allowing only a moiety of such claims as against the steamship *Hamilton* and this petitioner, the owner thereof" (fols. 393, 394).

Goslee's personal fault was argued on the original hearing before the Court.

It was shown that he had direct charge of the watch from 12 to 4 A. M., during which time the *Saginaw* was running at full speed in dense fog.

It was proved by Jacobson (fols. 102, 103) that Goslee was in actual charge from 12 till 4, and that when he resumed duty at 4 o'clock as lookout, Goslee answered his reports from the pilot-house. It was also admitted by Captain Tunnell that during this watch he, the master, had been below and asleep, having taken off part of his clothing and turned into his berth (fols. 119, 120).

The Court condemned the navigation by Goslee in the following terms:

"The facts here appear to be that prior to the collision the *Saginaw* had been running *for more than 30 miles in a dense fog under full speed bells*, and that, while so continuing, there was some reduction of speed when near the point of collision by the said directions to that effect through the speaking tube. She was probably going six knots at least at the time of contact. That rate of speed or even less in thick fogs in a frequented part of the ocean, as this was, has been frequently condemned" (fol. 172).

The officer of the watch participating in such faults is virtually the master when the master is below.

At any rate, he was a fellow-servant with the other navigating officers who were engaged in running the vessel at this improper speed. His representatives are, therefore, debarred from any recovery.

Robinson *v.* Detroit Nav. Co., 73 F. R., 883.
The *O. W. Thompson*, 39 F. R., 115.
See also the *Queen*, 40 F. R., 694.

The ninth exception affects not only Goslee, but all the members of the *Saginaw's* crew.

The fault for which the *Saginaw* was condemned was one of navigation. There is no claim that the owners were culpable, or that the ship was unseaworthy. In such case it is now settled by the Supreme Court that no action lies against the ship or owner for the negligence of any member of the crew. The duty of the owner is to furnish a seaworthy ship, and then to provide medical treatment to those requiring it, if needed to effect a cure, for hurts received in the service of the ship.

This point is not the same as the common law doctrine of fellow-servant—where in such case no recovery can be had for loss of life (Naylor *v.* N. Y. Central, 33 F. R., 801). It is a rule peculiar to the maritime law which declares the shipowner under no liability to his officers and crew for the personal injuries rosulting from errors in navigating a fit ship.

As to the claims of those who composed the crew of the *Saginaw*, we cite the *Osceola*, 189 U. S., 158, 175, where Justice Brown said:

> "The seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

Of course, if a surviving member of the *Saginaw's* crew cannot recover from the Clyde Line any indemnity, it is evident that no cause of action for death can be conferred by any statute as between the seaman's next of kin (who, by statute, are subrogated to the seaman's rights) and the Clyde Company.

How does this rule affect the *Hamilton?*

Under a familiar principle, the *Hamilton's* owners are only liable for a moiety of what would otherwise be the loss and recovery of the *Saginaw's* crew. This, for the

reason that the faults of the *Saginaw* are exclusively those of navigation. Her equipment was unquestioned. In fact, the decision of the Court acquits the Clyde Line of all blame for, or privity with, the collision. The neglects were therefore of their own ship's company, which debar any member of the crew from recovery, under the *Osceola* decision. Hence, as these seamen could not recover at all from their own ship, if living, their widows and next of kin cannot enforce any greater rights than could they, had they survived. As the claim against the Clyde Company is not valid, the claim against the *Hamilton* cannot be maintained for its full face, but the *Hamilton* remains answerable only for half of all such losses.

The *City of New York*, 25 F. R., 151.
The *Queen*, 40 F. R., 694.
Stahl *v. Niagara*, 77 F. R., 329, 336.

In the *City of New York*, Judge Addison Brown held:

"The maritime law as respects personal injuries has long been considered as well settled in limiting the recovery against the seaman's own vessel to wages for the rest of the voyage, and expenses of cure, where the owners have not been in any fault (The *City of Alexandria*, 17 Fed. Rep., 390, and cases there cited). If any different rule is hereafter to be applied as regards injuries happening through the commands of the master the present is not such a case. Here the master was below and was not in any personal fault. Claims for the loss of seamen's effects have been frequently included in the judgments of this Court in collision cases where the fault was wholly in the defendant's vessel. But I know of no case in which such claims have ever been adjudicated against the seaman's own vessel where the loss was wholly by the fault of her own officers or men. No such claim could be entertained without overturning one of the cardinal principles of maritime law which identifies the interests of the mariner with the interests of his ship, and affects all with the faults of the ship. As there was fault in this case on the part of the bark, as well as on

the part of the steamer, the claims of the crew against the steamer must be limited to one-half their damages" (p. 151).

Other claims urged on behalf of the estates of members of the crew are Mary Anderson, administratrix of Sarah Elam, the colored stewardess, and Sallie T. Morris, as administratrix of William Morris, the steward of the *Saginaw*.

All of these decedents, by well-recognized principles of the maritime law, were members of the ship's crew, and in case of personal injuries resulting from negligence in navigation, are entitled to only such attention and treatment as the owner might give after the accident. By the reasoning already stated, their claims against the *Hamilton* can in no event be decreed for more than one-half.

III.

THE DECREES BELOW HAVE DEPARTED FROM THE MARITIME LAW AND HAVE GIVEN AN EXTRA TERRITORIAL FORCE TO STATE STATUTES.

The maritime law as administered in our courts gives no remedy for death, as this Court decided in the *Harrisburg*, *supra*. That suit arose within the territory of Massachusetts. The question of State statutes, which was alluded to, had a stronger bearing, because the accident happened within State waters.

Indeed, in Crapo *v.* Kelley, this Court has limited the State power over vessels owned by its citizens to contract rights, or the devolution of property.

To say that these litigants could have sued the petitioner in the courts of Delaware, and that as the limitation proceedings enjoined such local actions and summoned all damage claimants into one general admiralty proceeding—that, therefore, the admiralty court is bound to enforce and extend a State statute to the high seas, is to beg the question.

The real question is how far has the State of Delaware legislative power over the maritime torts of merchant vessels of the United States owned by its citizens when such vessels are out of the State territory.

Suppose Delaware should pass an Employers' Liability Act, which in terms applied to all employers and corporations created by that State. Would such an enactment change and replace the ancient rule as declared in the *Osceola* of the relation of injured seamen to their vessel in case of an accident happening on the high seas?

A notable judgment of this Court, delivered by Justice Bradley, closed with this suggestive declaration:

"It might be a much more serious question whether a State law can have force to create a liability in a maritime case at all, within the dominion of the admiralty and maritime jurisdiction, where neither the general maritime law, nor an act of Congress, has created such a liability."

Butler *v.* Boston & Savannah S. S. Co., 130 U. S., 527, 558.

The claims of the crew of the *Saginaw* have not been dealt with under the admiralty. Had Goslee libelled the *Hamilton* for a broken leg—or other injury not causing death—he would recover but half damages. But this proceeding to limit the liability of the ship owner is essentially an admiralty proceeding, subject to its rules and

peculiar principles (Butler *v.* Boston & Savannah Co., *supra*). It cannot be made subsidiary to State legislation unless in respect to torts occurring within the State territory.

IV.

THE DECREES OF THE DISTRICT COURT AND THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED, AND THESE CLAIMS DISALLOWED AS AGAINST THE STEAMSHIP HAMILTON AND THE OLD DOMINION STEAMSHIP COMPANY, OR, IN ANY EVENT, THE AWARDS AS MADE SHOULD BE REDUCED AND OTHERWISE MODIFIED.

WING, PUTNAM & BURLINGHAM,
Proctors for Old Dominion Steamship Company, Petitioner-Appellant.

HARRINGTON PUTNAM,
HENRY E. MATTISON,
Advocates.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 71.

In the Matter of

The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship *Hamilton*, for limitation of liability,
Petitioner-Appellant,

PRIMUS GILMORE *et al.*,
Claimants-Appellees.

BRIEF FOR MARY SWANSON, WIDOW OF PETER SWANSON, CLAIMANT-APPELLEE.

STATEMENT OF FACTS.

The above case comes here on *certiorari* from the United States Circuit Court of Appeals for the Second Circuit, which affirmed the decree of the District Court for the Southern District of New York, entered on August 10th, 1905, in the limitation of liability proceeding brought by the petitioner.

On May 5th, 1903, a collision occurred near Winter Quarter Light Ship, on the Atlantic Coast, between the *Hamilton*, owned by the petitioner, and the *Saginaw*, of the Clyde Steamship Company, the *Saginaw* being sunk and practically a total loss. Peter Swanson, who was a passenger on the *Saginaw* and was just regaining the use of a broken leg, walking with a cane or crutch, occupied a berth in the saloon. He was last seen in the evening pre-

vious to the collision, just before he retired; was not seen after the collision; was not in either of the life boats launched and was not among those rescued. (pp. 141, 143, 147, 148 and 149.)

Both vessels were owned by Delaware corporations. The District Court found both vessels in fault, from which finding neither vessel appealed. It held that both vessels being owned by Delaware corporations were a part of the territory of that state and that under its laws the claimant, Mary Swanson, had a right of recovery for the death of her husband, Peter Swanson, and awarded her twenty-seven hundred and fifty dollars ($2,750) as damages therefor, reducing the award made by the Commissioner. The claimant, Mary Swanson, and the petitioner both appealed from the District Court decree, which was affirmed by the Circuit Court of Appeals, the order for the issuance of its mandate being entered on July 7, 1906, and a writ of certiorari being granted by this Court on the application of the petitioner herein.

The only question presented for the consideration of this Court, so far as the claim of Mary Swanson is concerned, is:

Whether in a proceeding for limitation of liability the Delaware statute applied to a claim for death on a Delaware vessel while at sea, caused by negligence on that vessel and another Delaware vessel colliding with it.

ARGUMENT.

IN THIS PROCEEDING FOR LIMITATION OF LIABILITY ARISING OUT OF A COLLISION AT SEA BETWEEN TWO DELAWARE VESSELS WHERE BOTH WERE AT FAULT, THE LOWER COURTS PROPERLY APPLIED THE DELAWARE STATUTE ALLOWING DAMAGES FOR DEATH, IN ADJUDICATING A CLAIM AGAINST ONE VESSEL FOR THE DEATH OF A PASSENGER ON THE OTHER.

The owners of both vessels were corporations organ-

ized under the laws of the State of Delaware and had, therefore, obtained their franchises and right to exist by favor of the laws of that state. The State of Delaware gives a statutory remedy for damages for death caused by negligence.

Laws of Delaware, v. 13-14, 1886-7, pp. 28, 29, provide as follows:

Section 2. "Whenever death shall be occasioned by *unlawful violence or negligence*, and no suit be brought by the party injured to recover damages during his or her life, the widow of any such deceased person, or if there be no widow, the personal representatives, may maintain an action for and recover damages for the death thus occasioned."

This Act was amended March 9th, 1901, so as to include widower.

It will be seen that there is no actual limitation in the statute itself, preventing it from applying to Delaware vessels while on the high seas, and according to familiar principles of law, it must apply wherever the general laws of the state would.

A.

Since Congress has not legislated with reference to the subject, the Statute of the State of Delaware, as a Sovereign State, allowing damages for death is binding and effective on its vessels when on the high seas.

The Constitution of the United States, Article I, Section 1, provides that all legislative powers shall be vested in Congress, and Section 8 provides over what subjects Congress may legislate, such as the regulation of commerce with foreign nations, and the passing of uniform laws on the subject of bankruptcy (*Sturges vs. Crowninshield*, 4 Wheat., 122). Possibly, under the former clause, Congress might legislate on the subject of this case, but

no proposition is better settled than that where Congress has not so legislated on the subject of bankruptcy for commerce the several states have ample power to legislate thereon. Furthermore, it has always been held in the Federal Courts that where legislative powers are not exclusively delegated to Congress by the Constitution, and have not been exercised by Congress, each individual state as a sovereign body reserves and has the right to legislate thereon. Article III, Section 1, of the Constitution prescribes that the judicial power of the United States shall be vested in the Supreme Court, and in inferior courts to be established by Congress, and in Section 2, that the judicial power shall extend "to all cases of admiralty and maritime jurisdiction." Of course this means that the jurisdiction of the *United States Courts* extends to these matters. The *judicial power* is here distinguished from the *legislative power*. The petitioner in its brief has confused the two absolutely, and speaks of them as though they were the same.

The judiciary act, U. S. Revised Statutes, Section 563, provides that the District Courts shall have jurisdiction "of all civil cases of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it." This latter clause is important, as we shall see later, because the claimant had a common law remedy in the courts of Delaware, which she was prevented from exercising by the filing of the petition for limitation herein.

In *Sturges vs. Crowninshield*, 4 Wheaton, 122, Chief Justice Marshall points out, at p. 192, that previous to the formation of the new Constitution, we were divided into independent states, united for some purposes, but in most respects sovereign; that these states could exercise almost every legislative power. He accordingly held that when no federal bankruptcy act was in effect, a state could, by virtue of its sovereignty, pass one.

Chief Justice Marshall also said, in *Martin vs. Hunter's Lessee*, 1 Wheat., 103, 326:

"The government of the United States cannot

> claim any powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication."

And in *Gibbons vs. Ogden*, 9 Wheat., 1, 187:

> "It has been said that they (the states) were sovereign, were completely independent, and were connected with each other only by a league. This is true."

Also:

> "This instrument (the Constitution) contains an enumeration of the powers expressly granted by the people to their government."

Indeed the 10th amendment to the Federal Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited, by it, to the states, are reserved to the states respectively, or to the people."

To the general effect that the Government of the United States is one of enumerated powers, and that powers not enumerated can be exercised by the states, as sovereign, see *Cooley's Constitutional Limitations, 7th Edition, Chapter II.*

In *The Lottawanna*, 21 Wallace, 558, 580, it was held that where Congress had not legislated with reference to liens or privileges on vessels, it was permitted to the legislatures of the several states to pass laws, giving liens to material men who would not have had them under the general maritime law, with the proviso, that an action *in rem* to enforce them should be brought in the Federal Courts, under the exclusive admiralty and maritime jurisdiction clause of the Constitution, and that when so brought, the Admiralty courts would enforce the State statutes.

In *The Glide*, 167 U. S., 606, this court held that the

common law courts have a concurrent jurisdiction with the District Courts over marine torts, where the suit is *in personam*, and said, at page 624:

> "A lien upon a ship for repairs or supplies, whether created by the general maritime law of the United States *or by a local statute*, is a *jus in re*, a right of property in the vessel, and a maritime lien, to secure the performance of a maritime contract, and therefore may be enforced by admiralty process *in rem* in the District Courts of the United States."

The Federal Courts have repeatedly held that where Congress has not legislated with reference to pilotage, the states may pass statutes, governing the matter, and the Federal Courts may give effect to these state statutes in suits for pilotage. This court so decided in ex parte *McNeil*, 13 Wallace, 236, holding that pilotage regulations came within the commerce clause of the Constitution, and said, at page 243:

> "It is urged further that a state law could not give jurisdiction to the District Court. This is true. A state law cannot give jurisdiction to any federal court; but that is not a question in this case. A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper federal tribunal, whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right, by applying the proper remedy. This principle may be laid down as axiomatic in our national jurisprudence. The party forfeits nothing by going into a federal tribunal. Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations as if it had been brought in the proper state tribu-

> nal of the same locality. In no class of cases has the application of this principle been sustained by this court more frequently than in those of admiralty and maritime jurisdiction."

In *Cooley vs. Board of Wardens*, 12 Howard, 299, this Court said, at page 318:

> "And on the other hand, if it were admitted that the existence of this power (to regulate commerce) in Congress, like the power of taxation, is compatible with the existence of a similar power in the states, then it would be in conformity with the contemporary exposition of the Constitution (Federalist, No. 32), and with the judicial construction given from time to time by this court, after the most deliberate consideration, to hold that the mere grant of such a power to Congress did not imply a prohibition on the states to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the states, and that the states may legislate in the absence of congressional regulations. Sturges vs. Crowninshield, 4 Wheat., 193; Moore vs. Houston, 5 Wheat., 1; Wilson vs. Blackbird Creek Co., 2 Peters, 251."

In *Steamboat Company vs. Chase*, 16 Wallace, 522, suit was brought in Rhode Island under a state statute, to recover damages for the death of one Cook, killed by a collision in Rhode Island waters, caused by the negligence of the Steamboat Company. The Rhode Island court awarded damages for death, and the Steamboat Company brought the case to this Court by writ of error to the Supreme Court of Rhode Island, contending that such matters were exclusively within the jurisdiction of the Admiralty Courts, and that the state statute, passed subsequent to the judiciary act, had no effect over such maritime matters. This Court held that these contentions were unsound, and that the state had power to legislate

on this subject, affirming the award made for the death of Cook.

In *Sherlock vs. Alling*, 93 U. S., 99, this Court held that until Congress makes some regulation touching the liabilities of parties for marine torts, resulting in death of the person injured, the statute of a state applies, where the tort was committed within the jurisdiction of the state, and as thus applied, it constitutes no encroachment upon the commercial power of Congress.

B.

The "Hamilton" and "Saginaw", for the purposes of this proceeding, were parts of the territory of the State of Delaware, and subject to its laws.

In *Wilson vs. McNamee*, 102 U. S., 572, McNamee, a pilot, tendered his services to the Schooner "E. E. Racket" on the high seas, about fifty miles from the port of New York. The Master refused the services, and came into port without a pilot. McNamee brought suit in the State Court, which awarded him the pilotage and the case was brought to this Court on writ of error. The point was made that the transaction took place outside of New York waters, on the high seas, and that therefore the New York statute had no effect.

This Court said, page 574:

> "A vessel at sea is considered as a part of the territory to which it belongs when at home. It carries with it the local legal rights and local jurisdiction of such locality. All on board are endowed and subject accordingly. The pilot upon his boat, had the same authority from the laws of New York to tender and demand employment, and the same legal consequences, under the circumstances, followed the refusal of the Master as if both vessels had then been *infra fauces terrae*, where the municipal jurisdiction of the State was complete and

> exclusive. The jurisdiction of the local sovereign over a vessel, and over those belonging to her, in the home port and abroad on the seas, is, according to the law of nations, the same. Dana's Wheaton, page 169, sect. 106; 1 Kent Com., 27; Vattel, bk. 1, ch. 19, sect. 216; 2 Rutherford's Inst., bk. 2, ch. 9, sects. 8, 19."

The Court went on to say that although the subject might properly be within the powers of Congress under the commerce clause of the Constitution, yet, nevertheless, the states had authority to legislate on the subject in the absence of such legislation by Congress.

In *Crapo v. Kelly,* 16 Wall, 610, it was held that a ship owned in Massachusetts, and on the high seas, was a part of the territory of Massachusetts, and that title to same passed to its owners' assignee in insolvency under the Massachusetts law. The Court said, at page 624:

> "It is perceived, therefore, that the relation of Massachusetts to the Union has no effect upon the title to this vessel. It stands as if the State were an *independent sovereign state,* unconnected with the other States of the Union. The question is the same as if this assignment had been made in London by a British Insolvency court, adjudicating upon the affairs of a British subject.
>
> "We are of the opinion for the purpose we are considering, that the ship "Arctic" was a portion of the territory of Massachusetts and the assignment by the insolvent court of that State passed the title to her in the same manner and with the like effect as if she had been physically within the bounds of that State when the assignment was executed.
>
> "The rule is thus laid down by Mr. Wheaton in his treatise on International law: 'Both the public and private vessels of every nation on the high seas, and out of the territorial limits of any

other state, are subject to the jurisdiction of the state to which they belong. Vattel says that the domain of a nation extends to all its just possessions, and by its possessions we are not to understand its territory only, but all the rights it enjoys. And he also considers the vessels of a nation on the high seas as portions of its territory. Grotius holds that sovereignty may be acquired over a portion of the sea.' As an illustration of the proposition that the ship is a portion of the territory of the state, the author proceeds: 'Every state has an incontestable right to the service of all of its members in the national defence, but it can give effect to this right only by lawful means. Its right to reclaim the military service of its citizens can be exercised only within its own territory, or in some place not subject to the jurisdiction of any other nation. The ocean is such a place, and any state may unquestionably there exercise, on board its own vessels, its right of compelling the military or naval services of its subjects.'

"Chancellor Kent, in his Commentaries, says: 'The high seas are free and open to all the world, and the laws of every state or nation have there a full and perfect operation upon the persons and property of the citizens or subjects of such a state or nation.' 'No nation has any right or jurisdiction at sea, except it be over the persons of its subjects, in its own public and private vessels; and so far territorially jurisdiction may be conceded as preserved, for the vessels of a nation are in many respects construed as portions of its territory, and persons on board are protected and governed by the law of the country to which the vessel belongs.'

"Wheaton says: 'A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries.'

"The modern German law is to the same point.

> Bluntschil, in Moderne Volkerrect, says: 'Ships are to be regarded as floating sections of the land to which they nationally belong, and whose flag they are entitled to carry.'
>
> "Bischof, in his Grundriss des Positiven Internationalen Seerechts, says: 'Every state is free on the seas, so that its ships are to be regarded as floating sections of its country, territoria clausa, la continuation du territoire, and those on board such ships in foreign waters are under their laws and protection. This even applies to children born to subjects on such ships.'
>
> "Wildman, in his treatise on International Law, says: 'Provinces and colonies, however distant, form a part of the territory of the parent state. So of the ships on the high seas.' 'The rights of sovereignty extend to all persons and things not privileged, that are within the territory.'"

In the *Lamington*, 87 Fed. Rep., 752, it was held that where an accident occurred on a British vessel on the high seas, the British law applied, because the vessel was a part of the territory of Great Britain, where it was owned. Judge Thomas states, on page 754, that the first question to be decided was,—

> "Did the accident occur on British territory? Every vessel outside of the jurisdiction of a foreign power is a detached floating portion of the territory of the country whose flag it flies, and under whose laws it is registered. The Scotia, 14 Wall. 170, 184; Crapo, v. Kelly, 16 Wall. 610, 624; Wilson v. McNamee, 102 U. S., 572, 574; In re Moncan, 14 Fed., 44; In re Ah Sing, 13 Fed., 286; U. S. v. Bennett, 3 Hughes, 466 Fed. Cas., No. 14574; McDonald v. Mallory, 77 N. Y., 546, 551, 553; Wheat. Int. Law (Dana's Ed.) §106; 3 Whart. Int. Law, Dig. 228; Whart. Confl. Laws, §356; 1 Kent Comm., 26; Vatt. Law Nat., bk. 1. ch. 19, §216; 1 Calvo, 552; Bluntschli, §317; 1 Martens (French Translation of

Leo.) 496; Seagrove v. Parks, 1 Q. B., Div. 551. The authorities noted so perfectly maintain the doctrine stated that quotation, amplification, or illustration is unnecessary.

As this question of territoriality was the first point which had to be decided by Judge Thomas, as he states, before proceeding to the other question as to the foreign law, his decision thereon can hardly be said to be dictum, as the petitioner seems to maintain in its brief.

Since petitioner has quoted from *Hall on International Law*, it is advisable that this authority be examined more carefully. The quotation on page 7 of the petitioner's brief is evidently printed to show that Mr. Hall did not believe in territoriality of vessels.

A careful reading of chapter 6, however, shows that although Mr. Hall did not like the term "territoriality" of vessels, he nevertheless agrees completely with the claimants in their interpretation of the law on the question of the jurisdiction of states over vessels on the high seas. He says, section 75:

> "It is consequently the settled usage that as a general rule, persons belonging to a state community, when in places not within the territorial jurisdiction of any power, are in the same legal position as if on the soil of their own state."

He further says, section 77, that a state has full civil jurisdiction over subjects on board its vessels, and civil *jurisdiction over foreigners*, to the extent, and for the purposes, that it is exercised over them on the soil of the state, unless partial exemption is given to them when on board, by the municipal law of the state.

It is plain, therefore, that he admits the jurisdiction, but merely dislikes the term "territoriality."

He admits that the United States has always stood distinctly for the territoriality of the merchant vessel, and quotes Mr. Webster in writing to Lord Ashburton, on August 8, 1842, as follows:

> "Every merchant vessel of the seas is rightfully

considered as a part of the territory of the country to which it belongs. The entry, therefore, into such vessel being neutral by a belligerent, is an act of force, and is *prima facie*, a wrong, a trespass which can be justified only when done for some purpose, allowed to form a sufficient justification by the law of nations." (Note on page 262 of Edition of 1895.)

C.

The weight of all well considered judicial authority supports the jurisdiction exercised by the lower courts in this case.

In *Lindstrom vs. The International Navigation Company*, 117 Fed. Rep., 170, an award was made for the death of a young woman who was washed overboard from the Steamer St. Paul by reason of the negligence of the ship owner. Judge Thomas held that as the St. Paul was an American vessel, registered at the port of New York, she was, when on the high seas a part of the territory of the State of New York, and that all civil rights of action for matters occuring on board of her at sea were determined by the laws of that state.

This was an action of tort, pure and simple, independent of contract, and the crucial test applied was, where was the tort committed?

The case of the *Alaska* and other cases relied upon by the petitioner were plainly distinguished by Judge Thomas. The cause was taken to the Circuit Court of Appeals for the Second Circuit, and that Court found, 123 Fed. Rep., 475, that the St. Paul was owned by a New Jersey corporation, and therefore part of the territory of New Jersey, and subject to its laws, one of which required such an action to be brought within one year, which was not done in that case, and therefore the action must fail.

Judge Wallace said:

"The territorial sovereignty of a state extends

> to a vessel of the state when it is upon the high seas, the vessel being deemed a part of the territory of the state to which it belongs, and it follows that a state statute which creates a liability or authorizes a recovery for the consequences of a *tortius* act operates as efficiently upon a vessel of the state when the vessel is beyond its boundaries as it does when it is physically within the State."

In the *Bourgogne*, 139 Fed. Rep., 433, the same court held that under the general law the territorial sovereignty of a state extends to a vessel of such state when it is upon the high seas, and that the law of France authorizing a recovery for loss of life against a vessel in fault therefor governs in any proceedings by the owner of a French vessel in the courts of the United States *for limitation of liability* for claims arising out of the sinking of a vessel on the high seas.

In *McDonald vs. Mallory*, 77 N. Y., 546, it was held that where a death occurred by negligence on a New York vessel on the high seas, the New York statute giving a cause of action for death applied, and that the subject matter of damages for death had not been committed by the constitution exclusively to the Federal Government, nor legislated upon by Congress, and was therefore regulated entirely by the laws of the state to which the vessel belonged, and whose sovereignty followed her until she came within the jurisdiction of some other government. It was pointed out that the power to punish for crimes committed on the high seas was expressly committed to the Federal Government by the Constitution, and that under the principle of *Crapo vs. Kelly*, civil rights of action for matters occurring at sea on board of a vessel belonging to one of the states of the Union must depend upon the laws of that state, unless they arise out of some matter over which jurisdiction has been vested in and exercised by the government of the United States, or over which the state has transferred its rights of sovereignty to the United States; that to this extent the vessel must be regarded as part of the territory of the state, while in respect to her rela-

tions with foreign governments, crimes committed on board of her and all other matters over which jurisdiction is vested in the Federal government, she must be regarded as part of the territory of the United States, and subject to the laws thereof.

In the case at bar *13½ Fed Rep.* 95, (Record pp. 107, 108), Judge Adams reviews the authorities on the question, and shows that they conclusively establish the proposition that the two vessels were part of the territory of the State of Delaware, and subject to its statutes giving damages for loss of life.

The reasoning of the district judge was approved by Judge Cox, who wrote the opinion in the Circuit Court of Appeals in the case at bar, and he shows that the question at issue had been settled conclusively in the Second Circuit in favor of the jurisdiction, (Record p. 257).

The only case which appears to present any conflict with the law as established by the above case is that of *Rundell v. La. Compagnie Generale Transatlantique*, 100 Fed. Rep. 656, and when that is carefully examined it will be seen that it does not really support petitioner's position. It arose out of the sinking of *"La Bourgogne"* and came up on exceptions to a libel, and the court found, on page 656 as its first ground of decision that the libel did not state that the death had occurred on the steamship *La Bourgogne*, but that the plain implication from the libel was that decedent was drowned on the high seas apart from the vessel, and that the locus of the tort was not upon French territory.

It went on to hold that the court could not apply the law of France in that case, but in this respect it must be said to be dictum.

D.

Uniformity of decision demands that the decisions in the case at Bar be sustained.

The petitioner has argued against the jurisdiction on

the ground that uniformity of decision would suffer if the claims were allowed.

As we have shown, all the authorities bearing on the question have held that the right of action contended for by claimants exists, with the possible exception of the *Rundell* case, in which that part of the decision was really dictum.

It is difficult to see how the reversal of the case at bar could make the decisions uniform. It would, on the contrary overthrow decisions which have been regarded as the law of the land, and which are familiar to Admiralty practitioners throughout the country. By treating the vessels as parts of the states in which they are owned, an absolute rule of uniformity is had.

A number of hypothetical cases are stated by petitioner in its argument for uniformity. The petitioner does not mention a single state where there is no statute allowing damages for death by negligence, except the State of Massachusetts. which is mentioned in the discussion of *The Robert Graham Dunn, 70 Fed. Rep., 270.*

In 1895 when the Dunn case was decided, there was no general statute in Massachusetts allowing damages for death, although there were at that time special statutes holding cerain corporations liable for death. In 1897 there was a general act passed in Massachusetts allowing damages for death. The Dunn case, therefore, is now of no weight, and so far as the petitioner's argument is concerned, it would appear that there is now uniformity among the states on the question. But, the petitioner argues, the case at bar is to be distinguished from the cases cited under the previous point, for the reason that there was no contract between those on the *Saginaw* and the steamship *Hamilton.* Is this uniformity? And should the officers of the steamship be able with impunity to commit torts against those on another vessel as distinguished from persons on their own vessel? If the reasoning of the case at bar be supported, there should be absolute uniformity in the decisions. Where the states or countries in which the vessels are owned give a right of action for death, such remedy will be applied in what-

ever court the case is brought. And if such a remedy is not given in such states or countries, it will not be applied, in whatever court the suit may be.

The cases cited by petitioner on page 20 of its brief as showing a conflict of federal decisions where the death occurred within state waters, when carefully examined do not show any conflict at all, except one case that has been overruled by this Court.

Referring to the *North Cambria, 40 Fed. Rep., 655*, it is enough to say that the court merely held that the Pennsylvania law did not create a lien on the vessel, so, of course, the action in rem could not lie.

In the *Glendale, 81 Fed. Rep., 633*, and the *Willamette, 70 Fed. Rep., 975*, the lien given by the state statute was enforced by the Federal court just as the lien given by a state statute for supplies would be enforced.

In the *"Dauntless," 129 Fed. Rep., 715*, the court held that there was no lien given by the California statute, and that an action in rem could not lie, but it expressly approved its former decision in the *Willamette*, where it held that the Oregon statute did give such a lien, and hence permitted a libel in rem. There is no confusion here.

In the *Dunn* case, 70 Fed. Rep., 270, the statute of Massachusetts was deficient, but one has now been passed similar to that of the other states, as we have seen.

The case of the *Ida Campbell, 34 Fed. Rep., 432*, refused damages for death by negligence occurring on state waters, and not on the high seas, even though the Minnesota statute allowed damages for death by negligence. As this decision has been over-ruled by all the later decisions of the Circuit Courts of Appeal in this country on that point, and by the decision of this court in the *Albert Dumois, 177 U. S., 240*, it is not thought that it will cause this court any embarrassment.

As to the *"Jane Grey"* referred to by petitioner, decided in 95 Fed. Rep., 693, it was found that the vessel belonged in the State of Washington, where the limitation of liability proceedings were instituted. The vessel sank in the Pacific Ocean, apparently on the high seas, and the law of

Washington was appplied, not onl as the law of the forum, but but as the law of the state where the vessel was owned. There is no confusion in this case. It is on all fours with the decision in the case at bar.

It is submitted that there is a substantial uniformity in the federal decisions on the question at issue, and that such uniformity should be sustained.

E.

There is no logical reason why damages should be allowed when there is a contract between the decedent and the vessel, and refused when no such contract exists.

The Circuit Court of Appeals in the case at bar properly held that the right of action provided by the Delaware statute is not founded on contract, but on tort, as appears plainly from the wording of the statute.

This Court, in the case of the *Albert Dumois*, 177 U. S., 240, held that in limited liability proceedings damages were properly allowed against the *Dumois* for the death of two passengers on the *Argo*, which was sunk by the collision. There was no contract between the *Argo's* passengers and the *Dumois*, and the damages were awarded for a tort, pure and simple, independent of contract, and although in that case the collision occurred within state waters, there is no reason to suppose that the element of contract would be of any more importance in case the laws of the state were applied upon a vessel while on the high seas.

It is interesting to note that this Court held in that case there was no right in rem because no lien was given by the local law.

Judge Adams in the District Court in the case at bar considered this contract theory, but dismissed it as not based on any logical distinction, and Judge Cox in the Circuit Court of Appeals said:

> "It is true that no contractual relation existed between the claimants' intestates and the Old Do-

minion Company, or the Hamilton, but we see no reason, based on sound logic, why a passenger of the Hamilton should be permitted to recover for her negligence, and a similar right be denied to the passengers of the Saginaw injured by the identical negligence," (Record p. 259).

F.

The claimants having a right of action in the Delaware courts under the statutes of that State, should not be deprived of their remedy when brought into this proceeding in in vitum.

We need not argue that if this were a case before the courts of Delaware the right given by the statutes of that state would be applied in favor of the claimants, the vessels being owned in Delaware,—their owners being incorporated under Delaware laws, and obtaining their rights and franchises therefrom.

Congress has not legislated in the matter, and no exclusive grant of such legislation has been given to Congress by the Constitution. The State of Delaware is therefore a sovereign state as to this legislation.

The petitioner came into the District Court in this proceeding, enjoining the prosecution of all suits in any other courts, and requiring all parties having claims to present them in this proceeding, and prayed that its liability should be limited, a favor granted to ship owners alone. Can it thereby defeat a remedy which a claimant would otherwise have?

The Circuit Court of Appeals in this case rightly said:

> "Every consideration based on equity and natural justice impels us to hold that it was not the purpose of the Limited Liability Act to enable vessel owners to force claimants into the Admiralty, and thus avoid claims which are valid and enforceable at Common Law. The intent was to limit the liability, not to destroy it." (Record p. 258).

G.

A number of the cases cited on Petitioner's Brief, when examined, do not support its case.

The quotation from the *Manhasset, 18 Fed. Rep., 918*, found on page 17 of petitioners' brief, has no particular bearing on the question at issue when the case itself is read.

It was an action in rem arising out of an accident within the State of Virginia. The Virginia statute gave no right in rem, and Judge Hughes went on to say at the end of his opinion, p. 928, that he would entertain a libel by the widow and minor children of the deceased, and suggested that the libel already filed be amended in that respect.

He also approved on page 927, of the exercise of Admiralty jurisdiction in enforcing state laws giving liens for supplies furnished to ships, and in enforcing pilotage laws of the states, since Congress had not yet legislated on the matter.

The case of *"The Scotland,"* 105 U. S., 25, is cited in petitioner's brief, p. 15, as authority for the rule that cases of tort, arising upon the high seas, will be governed by the law of the forum, that is, the general maritime law, as administered in those courts. An examination of the case will show, however, that this is so in the case of collision on the high seas, only where the contesting vessels do not belong to the same foreign state, and the court goes on to say at the foot of page 29:

> "But if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the law of their nation, carried under their common flag, and would determine the controversy accordingly."

The case of *The Belgenland*, 114 U. S., 355, cited in petitioner's brief, page 15, as authority that in cases of tort, arising upon the high seas, the Admiralty courts of the United States will be governed by the law of the forum, that is, the general maritime law, when carefully exam-

ined, will be found to strongly favor the claimant's case, rather than that of petitioner. This Court said at page 370:

> "Another qualification is that if the maritime law as administered by both nations to which the respective ships belong, be the same in both, in respect to any matter of liability or obligation, such law, if shown to the Court, should be followed in that matter, in respect to which they so agree, though it differ from the maritime law, as understood in the country of the forum; for as respects the parties concerned, it is the maritime law which they mutually acknowledge. *The Scotland*, 105 U. S., 24, 31."

Likewise, the *Branford City*, 29 Fed., 373, cited on page 15 of petitioner's brief, which simply held that the laws of the flag has no application to cases of tort, as between ships of different nationalities, and conflicting law.

H.

Every consideration, based on equity and natural justice, demands that compensation should be made for the loss of lives through negligence, upon the high seas, as well as on land.

It was long ago recognized by the legislatures of the states of this union, and of foreign nations, that the rule of the common law that there could be no recovery for damages, occasioned by death, due to wrongful acts, was most unjust and unreasonable, and not based upon natural equity. The purpose of remedial law is to provide just compensation for breaches of duty owed to others. It is universally admitted that there is no just or logical reason why a person should be permitted to commit a tort, which results in the death of the person injured, and should have to respond in damages for a tort which does not cause death. The early distinctions arose from

a fiction of the common law, and its unjustness and lack of equity are sufficiently attested by the action of our states and other countries in passing statutes, giving damages for such death.

Is there any sound logical reason why one should be able to commit a tort, causing death on a vessel on the high seas, without being held to any accountability therefor, and should be compelled to give restitution where the tort occurred on land or in state waters?

Judge Adams' opinion in this case (record, p. 108) strongly adverts to this question and answer it fully.

This is a case, therefore, where a court will be inclined to give justice, where it can, without doing violence to established precedents or statute law, as can be done in this case.

I.

THE DECREES OF THE LOWER COURTS HEREIN SHOULD BE AFFIRMED, WITH COSTS.

Respectfully submitted,

HUNT, HILL & BETTS,
Proctors for Mary Swanson,
Claimant-Appellee.

Geo. Whitefield Betts, Jr., Esq.,
Of Counsel.

Dated, December 4, 1907.

SUPREME COURT OF THE UNITED STATES.

THE HAMILTON,

In the Matter
of
The Petition of THE OLD DOMINION STEAMSHIP COMPANY, as owner of the Steamship HAMILTON for limitation of its liability,
Petitioner,

vs.

PRIMUS GILMORE, Administrator of the Estate of ALFRED GILMORE, ALVIN L. JOSEPH, and MAGGIE E. GOSLEE, Executors of the estate of EDWARD S. GOSLEE; SALLIE T. MORRIS, Admx., of WILLIAM MORRIS, and MARY ANDERSON, as Admx., of SARAH ELAIN.
Claimants-Respondents.

October Term, 1907
No. 71.

BRIEF IN BEHALF OF RESPONDENTS JOSEPH, GOSLEE, MORRIS AND ANDERSON.

STATEMENT.

This cause comes before the court on a writ of *certiorari* issued to the Circuit Court of Appeals for the Second Circuit, p. 261, to review a decree of that Court, made and entered July 7, 1906, affirming a decree

in Admiralty of the District Court for the Southern District of New York, pp. 260, 261, allowing to the representatives of certain deceased persons recovery in full of the damages sustained by them by reason of the death of their decedents on the high seas owing to the negligence of the petitioner's servants. Pp. 240, 241.

The deaths were caused by a collision at sea seven miles off Winter Quarter Shoal Lightship on the coast of Virginia, just south of the Maryland boundary, between the petitioner's steamship *Hamilton*, and the steamship *Saginaw* owned by the Clyde Steamship Company, in the early morning of May 5, 1903. For this collision both vessels were held to blame, but their owners were allowed to limit their liability. *Opinion of District Court.* Pp. 103, 106, 107. *Reported*, 134 Fed. 95.

The owners of both vessels acquiesced in the decision as to fault. P. 258. *Petitioner's Brief*, p. 4.

The claims involved in this case at present are for the deaths of three members of the *Saginaw's* crew and one of her passengers. *Petitioner's Brief*, p. 3.

The *Saginaw* was a total loss, p. 104, and the claims for death were proved against the present petitioner as owner of the *Hamilton*.

The owners of both vessels were corporations existing under the Laws of the State of Delaware. *Petition*, p. 2; *Claim of Clyde Steamship Company*, p. 18.

The right of the claimants, based on a Delaware Statute, to recover damages for the deaths of the persons whom they represented was contested by the petitioner on the theory that the District Court was

without jurisdiction by reason of the fact that the collision which caused the deaths occurred on the high seas, and that hence, the laws of Delaware did not apply although the owners of both colliding vessels were Delaware corporations. *Record,* pp. 212-214, 223.

This contention was overruled by the trial court, pp. 107-110, by the commissioner appointed to assess damages, pp. 217-218, and on the hearing of exceptions to the report. Pp. 228-230.

A further contention made by the petitioner was that the members of the *Saginaw's* crew were not entitled to recover more than one-half of their damages against the petitioner, by reason of the fact that the *Saginaw* was also negligent and they would not have been able to recover against her owner, their employer, under *The Osceola,* 189 U. S., 158. Pp. 224-225. This objection was also overruled. P. 235. *Reported,* 139 Fed., 906.

The claims for loss of life were, therefore, allowed in full against the petitioner, and a decree entered accordingly. Pp. 239-243.

On appeal from that decree the petitioner assigned as errors of the District Court among others:

"1. In that said Court erred in holding that claims for death of passengers and crew of the Steamship *Saginaw* could be maintained against this petitioner in this proceeding.

"2. That, as there is no element of contract, and the claims against the *Hamilton* and against this petitioner, are for a maritime tort committed upon the high seas, the Court erred in holding that the local Statute of the State of Delaware gave to such claimants a remedy for loss of life in the Admiralty.

* * * * * * *

"5. For that the Court erred in sustaining claims on behalf of the crew of the *Saginaw* for the full amounts thereof, instead of allowing only a moiety of such claims, as against the Steamship *Hamilton*, and this petitioner the owner thereof." *Record*, pp. 244-245.

The Circuit Court of Appeals affirmed the decree of the District Court in all respects, p. 260, overruling also cross-appeals lodged by the claimants on account of a reduction made by the District Court from the amounts of the damages awarded by the commissioner. Pp. 258-260. *Reported*, 146 Fed. 724.

In respect of the assignments of error above quoted the Circuit Court of Appeals held:

1. That the District Court had jurisdiction to enforce the rights given to the claimants under the Delaware Statute allowing damages for death, following its previous decisions in *International Navigation Co.* v. *Lindstrom*, 123 Fed. 475, and *La Bourgogne*, 139 Fed. 423, 439, and that the fact that no contractual relation existed between the claimants' intestates and the *Hamilton*, was immaterial. Pp. 257-258.

2. That as none of the claimants was personally negligent, all were entitled, although members of the crew of a vessel held in fault, to recover their full damages from the owner of the other vessel in fault, under the decisions of this court in *The Atlas*, 93 U. S. 302 *The Juniata*, 93 U. S. 337, and that the ruling in *The Osceola*, 189 U. S. 158 did not apply to the present case. P. 259.

The Commissioner and the District Court had both pointed out in their decisions the manifest injustice of

the petitioner's contention that a court of admiralty had no jurisdiction to deal with the death claims, in this case, when it was by reason of the petitioner's own act, in beginning proceedings for limitation of liability in New York, and the consequent injunction, p. 10, that the claimant's were prevented from taking proceedings in the State Courts of the petitioner's home State of Delaware. *Commissioner's Report*, p. 217. *Opinion of Court on Exceptions thereto*, p. 228.

With regard to this aspect of the case, the Circuit Court of Appeals said:

"Every consideration based on equity and natural justice impels us to hold that it was not the purpose of the limited liability act to enable vessel owners to force claimants into the admiralty, and thus avoid claims which are valid and enforceable at common law. The intent was to limit the liability, not to destroy it." *Opinion of Court of Appeals*, p. 258.

The application for certiorari and the petitioner's brief in this Court complain of the decision of the Court of Appeals in overruling its assignments of error above quoted. No others are involved. *Petition for Certiorari*, p. 5. *Petitioner's Brief*, p. 5.

The sole questions before this court therefore are:

1. Whether under a Statute of the State of Delaware, *Delaware Laws, 1866-7*, Vols *13-14*, pp. *28*, *29*, providing, as amended *Delaware Laws, 1901, Vol. 31, p. 500*, that:

"Whenever death shall be occasioned by unlawful violence or negligence, and no suit be brought by the party injured to recover damages during his or her life,

the widow or widower of any such deceased person, or if there be no widow or widower the personal representatives may maintain an action for and recover damages for the deoth and loss thus occasioned," p. 107, a District Court of the United States, sitting as a Court of Admiralty, in a proceeding for limitation of liability, by which claimants are forced to come before it, should refuse to allow a recovery for loss of life negligently caused by a collision on the high seas between two vessels owned by Delaware corporations.

2. Whether the decision of this court in *The Osceola,* 189 U. S. 158, modifies or limits the principle laid down in *The Atlas,* 93 U. S. 302, *The Juniata,* 93 U. S. 337 and in the other decisions of this court dealing with the rights of innocent third parties injured by the joint negligence of two vessels in a collision at sea?

FIRST POINT.

AS THE "SAGINAW" WAS OWNED IN DELAWARE THE LAWS OF DELAWARE WERE OPERATIVE ON BOARD THE VESSEL ON THE HIGH SEAS. THE CIRCUIT COURT OF APPEALS WAS THEREFORE RIGHT IN HOLDING THAT THE REPRESENTATIVES OF PERSONS NEGLIGENTLY KILLED IN THE COLLISION WITH THE "HAMILTON" WERE ENTITLED TO RECOVER DAMAGES UNDER THE DELAWARE STATUTE.

The Delaware Statute applied to loss of life on the *Saginaw,* caused by negligence, under the doctrine obtaining in international law and in our municipal jurisprudence, that there is a quasi-territorial jurisdiction over merchant vessels on the high seas inhering in

the State to whose citizens they belong. Whatever may have been the origin of the rule the reasonableness of the doctrine and its necessity are obvious, and it is now recognized as an established principle of international law by modern writers on that subject, by the decisions of this Court and of the Court of Appeals of New York.

A. *The Opinions of Publicists.*

The publicists, Continental, English, and American, are unanimous in the recognition of the principle of jurisdiction over such vessels on the high seas by the State to which they belong, though they differ somewhat in the statement of the ground on which it rests.

In *Le Droit des Gens,* Pradier-Fodéré's Ed. Paris, 1863, Vol. 1, Livre 1, Chap. XIX, §216. Vattel says: "If children are born on a vessel of a nation, they may be considered born in the territory; for it is natural to consider vessels as portions of its territory, especially when they are voyaging on the high seas," *

Subsequent text writers have repeatedly referred to this statement with approval and reaffirmed the principle that it laid down. I *Kent's Comm.,* 27; Dana's Wheaton, p. 169, §109; *Wharton's Conflict of Laws,* §356; *Blunts-*

* "Si les enfants sont nés dans un vaisseau de la nation, ils peuvent être réputés nés dans le territoire: car, il est naturel de considérer les vaisseaux de la nation comme des portions de son territoire, surtout quand ils voguent sur une mer libre." Vattel, Vol. 1, Livre 1, Chap. XIX, §216.

chli, Le Droit International Codifié, Livre IV, Subd. 4, §317, 318. *Heffter, Das Europäische Volkerreicht,* §78.

Bluntschli says:

"Section 317. Vessels are regarded as floating portions of the state to which they belong, and whose flag they are authorized to carry.

"Section 318. When vessels are on the high seas, the sovereignty of the state, whose flag they carry extends to the vessel completely."[1]

Dr. Heffter in *Das Europäische Volkerreicht,* published at Berlin, 1881, says at Section 78:

"Vessels which different nations send out of their territorial waters on to the high seas are in a certain sense wandering parts of their territory, which, even in the waters of foreign states, do not lose their nationality so long as the ownership of the vessel is not transferred to a foreigner."[2]

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[1] "§317. Les navires sont regardés comme des portions flottantes de l'état dont ils dépendent, et dont ils sont autorisés à porter le pavillon.

§318. Lorsque les navires se trouvent en pleine mer, la souveraineté de l'état dont its portent le pavillon s'étend au navire tout entier." *Bluntschli,* Livre IV, Subd., 4, §§317, 318.

[2] "§78. Die Schiffe, welche die Nationen aus ihren Gewässern in das freie Meer entsenden, sind gerwissermassen davon wandelnde Gebietstheile, welche selbst in fremde Gewässern ihre Nationalität nicht verlieren, so lange das Eigenthum des Schiffes keinem Fremden übertragen ist." *Heffter,* Das Europäische Volkerreicht, §78.

The latest writers on the subject adopt the principle in its entirety, and consider it as being perfectly well established.

Martens, in the French translation of Leo, *Vol. 1, p. 496*, says:

"All vessels which are on the high seas are subjected exclusively to the jurisdiction of their own government" and in *Vol. 2, p. 336:* "All vessels are considered on the high seas as a detached portion of the territory of the state under whose flag they sail. * * * It follows that all juridical transactions (*transacions juridiques*) and also criminal acts which occur on a ship on the high seas, must be examined solely according to the laws of the country to which it belongs. No foreign jurisdiction can exercise its authority therein, whether it concerns a merchant vessel or a ship of war."

Calvo in *Le Droit International,* Vol. 1, p. 552, says:

"As the sovereignty of a state extends over a vessel which carries its flag, it follows that all the prerogatives and all rights inherent in this sovereignty and notably the right of jurisdiction, belong to the sovereign state. In the exercise of this jurisdiction, merchant vessels are on the same footing as vessels of war. The vessels are looked upon as floating portions of the territory of the state from which they depend * * * Vessels, whatever they are, remain of necessity under the subjection of the laws and of the government of the country that covers them by its nationality. * * * * * * *

"It follows that the tribunals of the state to which the vessel belongs have jurisdiction of crimes or delicts committed during the voyage to the exclusion of all other jurisdiction. This jurisdiction extends to delicts committed by persons from the vessel not only on board but in the water surrounding the ship. * * *

This exclusive right of jurisdiction springs not only

from the fiction that the ship is, as Vattel says, a ' portion of the territory of the state,' in some way a prolongation of the national territory, but also from the principle of the freedom of the seas."

To the same effect are the statements of Déspagnet, in his *Droit International Public,* 3rd Edition, Paris, 1905, page 518, chapter 4, Subd. 2, §427, 428,[1] and, of Bonfils, 3rd edition, Paris, 1901, chapter 2, §607.[2]

Hall, in his *Treatise on International Law,* Oxford, 1904, from which a copious quotation is made in the petitioner's brief, at page 7, in dealing further with the question of the jurisdiction of a nation over vessels on the high seas, at pp. 253, 254, says:

"Putting aside the fiction of territoriality as untenable, it may be taken for granted that the jurisdiction exer-

[1] "428. En pleine mer tous les batiments de guerre ou de commerce ne relèvent que de la loi dont ils portent le pavillon, en ce qui concerne les actes accomplis à leur bord. C'est donc la loi du pays anquel ils appartiennent qui devra être observée: 1. Pour les formalités des actes juridiques réalisés sur les navires, notamment des actes de l'état civil, d'après la règle *Locus regit actum;* 2. Pour régler les contrats également conclus à bord, toutes les fois qu'il y aura lieu de suivre la lex loci contractûs, suivant le principe ordinaire en matière de conventions; 3. Pour fixer la nationalité d'après le lieu de naissance, l'enfant né à bord en pleine mer devant être considéré comme né dans le pays du navire." Despagnet, §428.

[2] "Les navires de guerre et les navires de commerce, lorsqu'ils se trouvent en pleine mer, en dehors des eaux littorales de tout Etat, sont soumis aux lois civiles et criminelles, aux jurisdictions civiles, criminelles, administratives, aux autorités publiques des Etats dont ils sont les ressortissants." Bonfils, 3rd. Edition, §607.

cised by a State over its merchant vessels upon the ocean is conceded to it in virtue of its ownership of them as property, in a place where no local jurisdiction exists; this being a reasonable theory and the only one which enters into competition with the doctrine of territoriality. It only remains therefore to see what are the limits of the jurisdiction thus possessed. As might be expected, it is sufficient to provide for the good order of the seas, and excludes foreign jurisdiction until grave reason can be shown for its exercise. Its extent may be defined as follows:

"A State has.....

"1. Administrative and criminal jurisdiction so as to bring all acts cognisable under these heads, whether done by subjects or foreigners, under the disciplinary authority established in virtue of State control, on board the ship, and under the authority of the State tribunals.—

2. Full civil jurisdiction over subjects on board, and civil jurisdiction over foreigners to the extent and for the purposes that it is exercised over them on the soil of the State, unless partial exemption is given to them when on board ship by the municipal law of the State.

"3. Protective jurisdiction to the extent of guarding the vessel against interference of any kind on the part of other powers, unless she commits acts of hostility against them, or does certain acts during war between two or more of them, which the belligerents are permitted to restrain, or finally escapes into non-territorial waters after committing or after some one on board has committed an infraction of the law of a foreign country within the territory of the latter."

And again the same author in his *Foreign Jurisdiction of the British Crown,* published at Oxford, 1894, at p. 246 says:

"Although the sovereignty of a State is imperfectly embodied in its merchant ships, there is enough of it to exclude the possibility that any other sovereignty shall make itself felt; and no principle of International Law is more universally recognized than that merchant vessels on the high seas are under the administrative, the civil, the criminal, and protective jurisdiction of the State to which they belong.

It would seem, therefore, that the inference sought to be drawn by counsel for the petitioner from Mr. Hall's statements as to jurisdiction over merchant vessels on the high seas, does not fairly represent the doctrines actually advanced by him. Hall merely disapproves of the doctrine of territoriality. He does not deny the jurisdiction of the home state over such vessels.

The same principles are announced by T. J. Lawrence in his *Principles of International Law,* p. 206; and by Hannis Taylor in his *Treatise on International Public Law,* Sections 262, 263, pp. 307, 308, where a careful distinction is made between the question of jurisdiction and extra-territoriality. To the same effect is Woolsey's *Introduction to the Study of International Law,* 2nd Edition, Section 58, p. 71.

Finally, John Bassett Moore, in his monumental *Digest of International Law,* published under the act of Congress, deals with the question of the jurisdiction over merchant vessels on the high seas, as follows, Volume 1, Section 174, p. 930:

"It is often stated that a ship on the high seas constitutes a part of the territory of the nation whose flag it flies. In the physical sense this phrase is obviously metaphorical. In the legal sense it means that a ship

on the high seas is subject to the exclusive jurisdiction of the nation to which, or to whose citizens it belongs. The jurisdiction is quasi territorial. *Woolsey, International Law,* Section 54; *Field, Internation Law,* Section 309; *North American Review,* July, 1862; *Crapo* v. *Kelly,* 16 Wall., 610; *Wilson* v. *McNamee,* 102 U. S., 572, 574; *Re Moncan,* 14 Fed., 44.

"The belligerent's right to visitation and search forms an exception to this rule. The only general exception in time of peace is that of piracy. *Jure Gentium.* The scene of the pirate's operations being the high seas and his crime being treated as a renunciation of the protection of the flag which he may carry, he is treated as an outlaw, whom any nation may capture and punish."

International law is enforced by the courts of the United States in controversies between private parties. *Ware* v. *Hylton,* 3 Dall., 281. *Thirty Heads of Sugar* v. *Boyle,* 9 Cranch, 330, *The Antelope,* 10 Wheat., 121, *Hilton Guyot,* 159 U. S., 163, *The Paquete Habana,* 175 U. S., 677.

B. *The Recognition of the Doctrine of Territoriality in our Diplomacy.*

The quotations given by Moore in his Digest of Despatches, from President Adams to Mr. Pickering, Secretary of State, May 21st, 1799; from Mr. Fish, Secretary of State to General Schenck, Minister of England, November 8, 1873; from Mr. Blaine, Secretary of State to Mr. Ryan, Minister of Mexico, November 27, 1889; from Mr. Evarts, Secretary of State, to Mr. Welsh, Minister to England, July 11, 1879, and July 29, 1879; and Mr. Frelinghuysen, Secretary of State, to Mr. Logan, October 15th, 1883, and Mr. Webster's statement of August 8th, 1842, all seem to indicate that the principle of the

jurisdiction over merchant vessels on the high seas is recognized by our Department of State as a settled doctrine of international law. *Digest,* Vol. 1, pp. 930-937.

This Court has called attention to this recognition by American Diplomacy of this doctrine of international law in *Crapo* v. *Kelly,* 16 Wall., 610, where at p. 631, Mr. Justice Hunt says:

"In the celebrated Trent Case, occurring in 1862, Messrs. Mason and Slidell were removed from a British private vessel by Commodore Wilkes, of the *San Jacinto,* a public vessel of the United States. Great Britain insisted that the rights of a neutral vessel not only had been violated, for which she demanded apology, but she insisted that these persons should be replaced and returned on board a British ship. This was done, and they were actually placed on board a British vessel in or near the harbor of Boston. *They were not British subjects, and their return could only have been demanded for the reason that they had been torn from British soil, and the sanctity of British soil as represented by a British ship had been violated. Citizenship or residence had no influence upon the question.*"

C. *The Application of the Doctrine by our Courts.*

The doctrine seems to be quite as firmly established in our municipal law as it is in our diplomacy.

Although the precise question involved in the present case never seems to have been before this Court, there are many decisions where the principle, on which the claimants' recoveries in this proceeding are based, is recognized and has been applied.

In *Crapo* v. *Kelly,* 16 Wall., 610, 1872, where this Court held that the insolvency laws of Massachusetts, operated to transfer title to a Massachusetts vessel, the

Arctic, while it was on the high seas, Mr. Justice Hunt delivering the opinion of this Court said on page 624:

"We are of the opinion, for the purpose we are considering that the ship *Arctic* was a portion of the territory of Massachusetts, and the assignment by the insolvent court of that State passed the title to her, in the same manner and with the like effect as if she had been physically within the bounds of that State when the assignment was executed."

He cites various publicists as laying down the theory of quasi territorial jurisdiction over vessels on the high seas, and on page 630 says:

"It is said, however, that the fact that the property on board a vessel at sea and the vessel itself, contracts respecting them and the distribution of the assets of the intestate, are regulated by the laws of Massachusetts, arises solely from the circumstance that the owner is a resident of that State; that jurisdiction of the parties it is, that gives the jurisdiction of these subjects. The authorities from Kent, Story, and Wheaton, and the continental authorities, the civil law before cited, as well as the decisions in *Plestoro* v. *Abrahams*, Paige 236, make the ship itself, under such circumstances, *a part of the territory of the State to which its owners belong*. If he resides in Boston his property in the remotest county of the State is under the protection of its laws, as being upon and within its territory. So his property on his ship, for the purpose we are considering, is legally and constructively within its territory. In each case it is true that the existence of an owner is necessary to call forth the exercise of the law and the duty and power of the State. In this sense, it is true, that the residence of the owner produces the result. It is produced, however, not only by the existence and residence of the owner, *but by an extended State territory upon which his property remains, and where it is subject to State laws and entitled to the protection of the same laws.*"

It is interesting to observe, in this connection, that in *Crapo* v. *Kelly*, all the objections to the doctrine there laid down by this court were advanced at the argument which are now advanced in the present case against allowing jurisdiction for death claims under the Delaware statute. These objections were successively disposed of, and the court rested its decision squarely as we understand the opinion on the proposition that the Massachusetts laws apply to a vessel owned in Massachusetts while she was on the high seas, under the theory of quasi territoriality. Pp. 623, 624, 626, 630, 631.

In *Wilson* v. *McNamee*, 102 U. S. 572, 1880, McNamee, a licensed Sandy Hook pilot tendered his services to the schooner *E. E. Racket*, when about fifty miles at sea, and his services having been refused sought to recover his pilotage under the New York Statute. In affirming a judgment of the New York Court of Appeals allowing a recovery, this court speaking through Mr. Justice Swayne said at p. 574:

"*A vessel at sea is considered as a part of the territory to which it belongs when at home.* It carries with it the legal right and legal jurisdiction of such locality. All on board are endowed and subject accordingly. The pilot, upon his boat, had the same authority from the laws of New York to tender and demand employment, and the same legal consequences, under the circumstances, followed the refusal of the master as if both vessels had then been *infra fauces terrae*, where the municipal jurisdiction of the State was complete and exclusive. The jurisdiction of the local sovereign over a vessel, and over those belonging to her, in the home port and abroad on the sea, is according to the law of nations, the same. *Dana's Wheaton*, p. 169, sect. 106;

1 Kent Com., 27; *Vattel,* bk. 1, c. 19, sect. 216; 2 *Rutherford's Inst.,* bk. 2, c. 9, sects. 8, 19."

To the same effect are remarks by Mr. Justice Strong in *The Scotia,* 14 Wall. 170, 184; by Mr. Justice Harlan in *St. Clair* v. *The United States,* 154 U. S. 134, 152; by Mr. Justice Field, sitting in Circuit in *In re Ah Sing,* 13 Fed. 286 at page 289. The same principle seems to be recognized by Chief Justice Waite in *Wildenhus's Case,* 120 U. S. 1, 12.

In the lower Federal Courts, besides the present case, there have been a number of decisions in which the principle of the quasi-territoriality of vessels has been asserted, notably by Judge Deady in *In re Moncan,* 14 Fed. 44, 48; by Judge Pardee in *The E. B Ward,* 17 Fed. 456, 459; by Justice Brown, when District Judge, in *Ex parte Byers,* 32 Fed. 404, 410; by Judge Thomas in *The Lamington,* 87 Fed. 750, 754; and in *Lindstrom* v. *International Nav. Co.,* 117 Fed. 170, 171; by Judge Wallace speaking for the Circuit Court of Appeals for the Second Circuit in *International Navigation Company* v. *Lindstrom,* 123 Fed. 475 476, and by Judge Lacombe speaking for the same Court in *La Bourgogne,* 139 Fed. 433, 438, 439.

In *Ex Parte Byers,* 32 Fed. 404, Justice Brown, then Judge of the Eastern District of Michigan, said at page 410:

"That an American vessel is in reality a floating parcel of American soil, is a maxim of all writers upon the laws of nations, 1 *Bish. Crim. Law,* §579, and is

recognized in the case of *Wildenhus*, 120 U. S. 1, 7 Sup. Ct. Rep. 385, and expressly decided in *Crapo* v. *Kelly*, 16 Wall. 610."

In *International Nav. Co.* v. *Lindstrom*, 123 Fed. 475, 476, Judge Wallace said:

"The territorial sovereignty of a State extends to a vessel of the State when it is upon the high seas, the vessel being deemed a part of the territory of the State to which it belongs; and it follows that a State Statute which creates a liability or authorizes a recovery for the consequences of a tortious act operates as efficiently upon a vessel of the State when a vessel is beyond its boundaries as it does when it is physically within the state."

The only case which counsel have been able to find in which any of the State Courts have dealt specifically with this principle is that of *McDonald* v. *Mallory*, 77 N. Y., 546 (1879).

In *McDonald* v. *Mallory*, an accident had occurred on the defendant's steamer on the high seas whereby the plaintiff's intestate was killed. The vessel's home port was New York, and the complaint alleged that the accident had occurred within the territory of the State of New York. The demurrer interposed on the ground of no jurisdiction, was overruled. Rapallo, J., in delivering the opinion of the Court, used the following language:

"It is settled by the adjudication of our own Courts that the right of action for causing death by negligence, exists only by virtue of the statute, and that where the wrong is committed within a foreign State or Country, no action therefor can be maintained here, at least with-

out proof of the existence of a similar statute in the place where the wrong was committed," citing *Whitford* v. *The Panama R. R.*, 23 N. Y., 465; *Crowley* v. *Panama R. R.*, 30 Barb., 99; *Beach* v. *The Bay State Steamship Co.*, 30 Barb., 433; *Vanderventer* v. *The N. Y. & N. H. R. R. Co.*, 27 Barb., 244. * * * "I cannot escape the conclusion that under the principle of the case of *Crapo* v. *Kelly*, civil rights of action for matters occurring at sea on board of a vessel belonging to one of the States of the Union, must depend upon the laws of that State * * * and that to this extent, the vessel must be regarded as part of the territory of the State. * * * In the present case, the defendants were at the time of the wrongful act or neglect, and of the injury, within this State, and subject to its laws."

There seems to be no decision of the Supreme Court of Delaware on this question.

The foregoing decisions and expressions of opinion indicate that the doctrine of the quasi territoriality of vessels of the several states, is firmly established in our jurisprudence.

The well settled doctrine that the domicile of the owner is "the situs of a vessel for the purposes of taxation," as Mr. Justice White said in *Ayer* v. *Kentucky*, 202 U. S., 409, at page 421, seems to involve the same basic principle. *Hayes* v. *Pacific Mail S. S. Co.*, 17 How., 596, *St. Louis* v. *Ferry Co.*, 11 Wal., 423, *Morgan* v. *Parham*, 16 Wall., 471, *Transportation Company* v. *Wheeling*, 99 U. S., 273, *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S., 365, *Gloucester S. S. Co.* v. *Pennsylvania*, 114 U. S., 196, *Old Dominion S. S. Co.* v. *Virginia*, 198 U. S., 299.

Furthermore it is held that the home state of a vessel owned by a corporation is the place of its owner's incorporation. *The Havana*, 64 Fed., 496, *International Nav. Co.* v. *Lindstrom*, 123 Fed., 475, *The Plymouth Rock*, 13 Blatchf., 505, *Scudder* v. *Calais Steamboat Co.*, 1 Cliff., 370. Vessels belonging to owners living in one state are "foreign" vessels in other states in regards to liens for repairs and supplies under the general maritime law. *The Grapeshot*, 9 Wall., 129; *The Kalorama*, 10 Wall., 205; 212; *The Roanoke*, 189 U. S., 185, 193; *The Havana*, 64 Fed., 496; *The Golden Rod*, 151 Fed., 67.

These authorities seem to establish the principle that, in the eyes of the law, the tort by which the claimants met their death was consummated within the territorial jurisdiction of the State of Delaware. Therefore the Statute of Delaware, invoked as a basis for the claims, is applicable.

There is no constitutional objection to the enforcement, by an admiralty court, of a right of action for death which survives under the provisions of the Delaware Statute.

In *Panama R. R. Co.* v. *Napier Shipping Co.*, 166 U. S. 280, Mr. Justice Brown in dealing with the extent of our jurisdiction gave to it a scope greater than is necessary to support the claimant's position in the present case. He carried it into foreign territorial waters. He said at p. 285:

"The fact that the cause of action arose in the waters of a foreign port is immaterial. While in some cases it is said that a court of admiralty has jurisdiction of all torts arising upon the high seas or upon the navigable waters of the United States, *The Commerce*, 1 Black, 574; *Holmes* v. *O. & C. Railroad*, 5 Fed. Rep. 75;

The Clatsop Chief, 8 Fed. Rep. 767, the connection in which those words are found indicate that they were not used restrictively; and the law is entirely well settled both in England and in this country, that torts originating within the waters of a foreign power may be the subject of a suit in a domestic court. The authorities upon this subject are fully reviewed in an exhaustive opinion by the late Judge Emmons in the case of *The Avon*, Brown's Adm. 170, wherein jurisdiction was taken of a collision occurring upon the Welland Canal in Canada. To the same effect are *Smith* v. *Condry*, 1 How. 28; *The Ticonderoga*, Swabey, 215; *The Griefswald*, Swabey, 430; *The Diana*, Lushington, 539; *The Courier*, Lushington, 541; *The Halley*, L. R. 2 Ad. & Ec. 3; *S. C.*, L. R. 2 P. C. 193; *The Mali Ivo*, L. R. 2 Ad. & Ec. 356; *The M. Moxham*, 1 P. D. 43, 107." And see *U. S.* v. *Burnett*, 3 Hughes, 466."

D. *The Doctrine of the Territoriality of Vessels of the several States in its Constitutional aspect.*

In the absence of Congressional legislation on the subject, a State Statute of the kind in question here, is valid and enforceable in the Federal Courts. *Steamboat Co.* v. *Chase*, 16 Wall. 522; *Sherlock* v. *Alling*, 93 U. S. 99.

In the latter case, which came up on writ or error to the Supreme Court of Indiana, the question before this Court was whether an Indiana Statute similar to the Delaware Statute applied to a collision in Indiana waters between vessels engaged in interstate commerce. The objection urged was that under such circumstances a State law could not be applied. Mr. Justice Field in rendering the opinion of this Court defined the allowable scope of State legislation that might affect such matters.

He said on pages 103, 104:

"The act 'only declares a general principle respecting the liability of all persons within the jurisdiction of the state for torts resulting in the death of parties injured. And in the application of the principle it makes no difference where the injury complained of occurred in the state, whether on land or on water. General legislation of this kind, prescribing the liabilities or duties of citizens of a state, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce. Objection might with equal propriety be urged against legislation prescribing the form in which contracts shall be authenticated, or property descend or be distributed on the death of its owner, because applicable to the contracts or estates of persons engaged in such commerce. * * * But with reference to a great variety of matters touching the rights and liabilities of persons engaged in commerce, either as owners or navigators of vessels, the laws of Congress are silent, and *the laws of the state govern. The rules for the acquisition of property by persons engaged in navigation, and for its transfer and descent, are, with some exceptions, those prescribed by the state to which the vessels belong; and it may be said, generally, that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.* In our judgment, *the statute of Indiana falls under this class.* Until Congress, therefore makes some regulation touching the liability of the parties injured, *we are of opinion that the Statute of Indiana applies, giving a right of action in such cases to the personal representatives of*

the deceased, and that, as thus applied, it constitutes no encroachment upon the commercial power of Congress."

That a State Statute should be applied in such a case in a Court of Admiralty has been clearly indicated by this Court in *The Corsair,* 145 U. S. 335, in which the loss of life occurred on the tug *Corsair* in the Mississippi River ten miles above New Orleans and within Louisiana waters. The Statute of Louisiana provides for an action for damages for loss of life. The case had been decided on exceptions to the libel.

In the opinion of this Court in *The Corsair,* Mr. Justice Brown said, at page 343:

"An important question arises in connection with the dismissal of the original libel, which has never been squarely presented to this Court before and that is as to the power of the District Court to entertain a libel *in rem* for damages incurred by loss of life, where by the local law a right of action survives to the administrator or relatives of the deceased, but no lien is expressly created by the act * * * In the case of *The Harrisburg,* 119 U. S. 199, it was held that *in the absence of an act of Congress or a State Statute giving a right of action therefore,* a suit in admiralty could not be maintained to recover damages for the death of a human being caused by negligence. This was a mere application to the Court of Admiralty of a principle which had been announced by this Court as applicable to courts of common law in *Insurance Co.* v. *Brame,* 95 U. S. 754. *The Harrisburg* was a Pennsylvania vessel and the collision occurred in the waters of Massachusetts, both of which States gave a remedy by a civil action, with a proviso that such action should be brought within one year after death; and while the question of the right to sue *in rem* for the recovery of such

damages when an action at law had been given therefore by the State Statute, was presented in that case, it was not decided, since the suit was not begun until nearly five years after the death, and the case went off upon that ground."

After discussing and quoting from *The Vera Cruz*, 10 App. Cas. 59, cited by the counsel for the petitioner at page 11 of his brief, Mr. Justice Brown, further said, page 347:

"This is the last expression of the highest court of England upon the question of proceeding *in rem* under Lord Campbell's Act, and must be regarded as settling the law of that country that such jurisdiction is not conferred. That, notwithstanding this, an action *in personam* will lie in the Admiralty Division is evident from the case of *The Bernina*, 11 Prob. Div. 31, in which the Admiralty took cognizance of the case, and upon appeal to the Court of Appeal, 12 Prob. Div. 58, and subsequently to the House of Lords, 13 App. Cas. 1, the jurisdiction was sustained, a trial by jury being now permitted in that court, although the main question discussed was as to the principle involved in the case of *Thorogood* v. *Bryan*, 8 C. B. 115. While these cases turn upon the construction of the English acts, *the courts have been guided in such construction by principles which are of general application both in this country and in England.*

"A maritime lien, is said by writers upon maritime law to be the foundation of every proceeding *in rem* in the Admiralty. In much the larger class of cases, the lien is given by the general Admiralty law, but in other instances, such for example as insurance, pilotage, wharfage, and materials furnished in the home port of the vessel, the lien is given if at all by the local law. As we are to look, then, to the local law in this in-

stance for the right to take cognizance of this class of cases, we are bound to inquire whether the local law gives a lien upon the offending thing. If it merely gives a right of action *in personam* for a cause of action of a maritime nature, *the District Court may administer the law by proceedings in personam as was done with a claim for half pilotage dues under the law of New York,* in the case of *Ex parte McNiel,* 13 Wall. 236, but unless a lien be given by the local law, there is no lien to enforce by proceedings *in rem* in the Court of Admiralty."

The libel *in personam* joined by amendment to the libel *in rem* in *The Corsair,* was held improper because it was an improper joinder of ship and owner as defendants in violation of Admiralty Rule 15, 145 U. S. 341, 342; because it was defective if viewed as an independent libel because it failed to state that the respondents were owners of the tug, p. 343; and also it seems, because it had been brought after period of one year during which under the Louisiana Statute the action shoud have been started. Pp. 340, 341.

In *The H. E. Willard,* 52 Fed. 387, Mr. Justice Gray, sitting in Circuit, citing, among other cases, *The Corsair,* said, at page 389.

"The Admiralty jurisdiction is conferred on the courts of the United States by the Constitution, and cannot be enlarged or restricted by the legislature of a state. When a right maritime in its nature has been created by the local law, the Admiralty Courts of the United States may doubtless enforce that right, according to their own rules of procedure."

In *Ex Parte McNiel,* 1871, 13 Wall., 236, referred to by Mr. Justice Brown, in *The Corsair,* a libel had been

filed in the District Court for the Eastern District of New York, by a pilot, licensed under the laws of New York, against the bark *Maggie McNiel* to recover half pilotage fees. The District Court gave judgment to the libelant, and a petition for a writ of prohibition to prevent the execution of the judgment, was denied by the Supreme Court. The court said at page 243:

"It is urged further that a State law could not give jurisdiction to the District Court. That is true. A State law cannot give jurisdiction to any Federal court; but that is not a question in this case. *A State law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal, whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction... That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our National jurisprudence. A party forfeits nothing by going into a Federal tribunal.* Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper State tribunal of the same locality. *Robinson* v. *Campbell,* 3 Wheaton, 223; *U. S.* v. *Knight,* 14 Peters, 315; *Steamboat Orleans* v. *Phoebus,* 11 Id., 184; *Thompson* v. *Phillips,* 1 Baldwin, 272, 204; *Lorman* v. *Clarke,* 2 McLean, 568; *Ex parte Biddle,* 2 Mason, 472; *Johnston* v. *Vandyke,* 6 McLean, 423; *Prescott* v. *Nevers,* 4 Mason, 327; *Clark* v. *Sohier,* 1 Woodbury & Minott, 368. In no class of cases has the application of this principle been sustained by this court more frequently than in those of admiralty and maritime jurisdiction. (*The St. Lawrence,* 1 Black, 522; *The General Smith,* 4 Wheaton, 438; *Peyroux* v. *Howard,* 7 Peters, 324; *Rules of Practice in Admiralty,* established by this court, Nos. 12 & 92.)

In *The City of Norwalk,* 55 Fed., 98, in which the enforcement by a Court of Admiralty of the New York death statute was in question, Judge Addison Brown in summarizing the cases in which admiralty habitually enforced rights which had accrued under state statutes, said at page 106:

"The long-established doctrine in the Supreme Court has been that in this field of 'border legislation,' state laws are valid until Congress interposes, and thereby excludes further state legislation. *The Lottawanna,* 21 Wall., 558, 581; *Cooley* v. *Port Wardens,* 12 How., 299; *County of Mobile* v. *Kimball,* 102 U. S., 691, 697-699; *Bowman* v. *Railroad Co.,* 125 U. S., 507, 8 Supt. Ct., Rep., 689, 1062; *Leisy* v. *Hardin,* 135 U. S., 100, 120-122, 10 Supt. Ct., Rep., 681; *Manchester* v. *Massachusetts,* 139 U. S., 240, 266, 11 Sup. Ct. Rep., 559; *Fickden* v. *Taxing Dist.,* 145 U. S., 1, 12 Sup. Ct. Rep., 810. There is no reason why local state legislation should be deemed any more restricted by the *implied* power of Congress over maritime legislation, than it is by the *express* grant of *the commercial* power. That the rule should be the same on each subject was intimated by Chief Justice Marshall in *U. S.* v. *Bevans,* 3 Wheat., 385, and by Mr. Justice Curtis, in *Smith* v. *State of Maryland,* 18 How., 71, 76. The subject has been but little discussed, as compared with the frequent review of the commercial power of congress and its limitations.

"The instances, however, in which *new legal rights,* created by state authority in maritime affairs, have been recognized and enforced, are numerous and diverse. They embrace—First, liens for *supplies* to domestic vessels (*The Lottawanna,* 21 Wall., 558); second, liens for *master's wages* (*The Mary Gratwick,* 2 Sawy., 342, affirmed by Mr. Justice Field; *The Louis Olsen,* 52 Fed.

Rep., 652; *The J. E. Rumbell* (March 6, 1893), 13 Sup. Ct. Rep., 498); third, liens for damages for *refusing to load* under a charter, (*The J. F. Warner*, 22 Fed. Rep., 342, by Brown); fourth, liens for *double* wharfage (*The Virginia Rulon*, 13 Blatchf. 519); fifth, actions for half pilotage where a pilot's services were *refused* (*Ex parte McNiel*, 13 Wall., 236, and *Ex parte Hager*, 104 U. S., 520, reaffirming *Cooley* v. *Port Wardens, supra*); sixth, liens for expenses of seamen at a quarantine *Hospital* (*The Wensleydale*, 41 Fed. Rep., 829); seventh, regulations as to *rivers, harbors, and wharves* (*County of Mobile* v. *Kimball, supra; Escanaba & L. M. Transp. Co.* v. *Chicago*, 107 U. S., 678, 2 Supt. Ct. Rep., 185; *Transportation Co.* v. *Parkersburg*, 107 U. S., 691, 701-704, 2 Sup. Ct. Rep., 732; *Packet Co.* v. *Keokuk*, 95 U. S., 80; *Packet Co.* v. *Aiken*, 121 U. S., 444, 7 Sup. Ct. Rep., 907; *Steamship Co.* v. *Pennsylvania*, 122 U. S., 326, 346, 7 Sup. Ct. Rep., 1118; eighth, *penalties* imposed for the protection of *fisheries* (*Manchester* v. *Massachusetts, supra; Smith* v. *State of Maryland*, 18 How., 71); ninth, *quarantine* laws (*Morgan's L. & T. R. & S. S. Co.* v. *Louisiana Board of Health*, 118 U. S., 455, 6 Sup. Ct. Rep., 1114); tenth, regulating the *charges* of *floating elevators* (*Budd* v. *New York*, 143 U. S., 517, 12 Sup. Ct. Rep., 468); eleventh, establishing and regulating ferries (*Gibbons* v. *Ogden*, 9 Wheat. 1, 203; *Conway* v. *Taylor*, 1 Black, 603; *Wiggins Ferry Co.* v. *City of East St. Louis*, 107 U. S., 365, 2 Sup. Ct. Rep., 257; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196, 204, 214-217, 5 Sup. Ct. Rep., 826).

"Besides these new rights created, of so diverse a character, there are many other local regulations established under state authority, concerning the navigation of rivers and harbors, anchorage grounds, port wardens, naviga-

tion about piers and slips, and wharf and ferry privileges, which give birth to many specific rights that are constantly recognized and enforced in the trial of admiralty causes. These acts rest either upon the police power of the states, or on the local nature of the subject, and the absence of any legislation by congress on the same matter. *Gloucester Ferry Co.* v. *Pennsylvania, ut supra.* They show that over quite a wide range of local interests, state legislation is competent to deal with purely maritime subjects, and to create rights and duties which must be recognized in admiralty causes, though they may not change any of the characteristic principles of the maritime law.

"Still further, it must be borne in mind that the maritime law is not in itself a complete and perfect system. In all maritime courts, there is a considerable body of municipal law that underlies the maritime as the basis of its administration. Strictly speaking, the maritime law is that alone which is peculiar to, or which specially concerns maritime transactions. The general body of the law as regards the ordinary, fundamental rights of persons and property, whether on land or sea, is as observed by Mr. Justice Field, in the passage above quoted, derived from the constituted order of the state, *i. e.*, from the municipal law, which courts of admiralty to a considerable extent must necessarily adopt and follow, subject only to the modifications which the special characteristics of the law of the sea impose on maritime subjects. Those general rights and regulations of persons and property are subject to the control of the state and may be changed as the state sees fit, if they are not regulated by congress and do not trench upon its exclusive authority. The administration of the law in the maritime courts of different countries, therefore, though it might be the same in all that is peculiar to the maritime law, might in other respects differ widely, through the differences in the municipal law which in part enters into the adjudication of maritime causes.

"It was upon the recognition of this principle alone, as I understand, that in the case of *The Harrisburg,* 119 U. S., 199, 213, 7 Sup. Ct. Rep., 140, it was decided that no action could be maintained in a court of admiralty of this country for loss of life, aside from statutory authority; namely, because there is no rule on the subject belonging specially to the maritime law as such. "It (the maritime law), leaves the matter untouched." Page 213, 119 U. S., and page 146, 7 Sup. Ct. Rep. And since the maritime courts in each country follow their own municipal law as regards giving damages for death; and inasmuch as by the common law of the country such a cause of action does not survive,—the latter rule must, therefore, obtain in our courts of admiralty. In other words, it is the municipal law that on such a point determines the law applicable in a court of admiralty.

"There seem, therefore to be at least three classes of subjects (none of them affecting, however, what is peculiar to the general maritime law, or touching its international or interstate relations), in which state legislation is competent to affect the rights of parties in courts of admiralty, in the absence of legislation by congress, viz.: (1) In the establishment of the general rights of persons and property within the state limits, (2) in the exercise of the police power; (3) in certain local regulations of a maritime nature.

"The statute of this state which authorizes a recovery of "the pecuniary damages," "in behalf of a widow, husband, children or next of kin," falls within each of the above classes. (1) It is a general law of personal rights, not specially directed to commerce or navigation, but applying alike on sea or shore; (2) it is within the police power, for it is "a statute intended to protect life" (Huntington *v.* Attrill, 146 U. S., 657, 675, 13 Sup. Ct., Rep., 224), through one of the most effectual of all sanctions, viz: by imposing on the offender a liability to pay a pecuniary indemnity; while in the interest of the public, it also tends to avert the dependency of pauperism of

the survivors by shifting the burden of their support, in part at least, from the community to the authors of the wrong; (3) it is local in its scope and interferes in no way with any needful uniformity in the general law of the seas, or with international or interstate interests. Its validity, therefore, as applied to maritime affairs within the state limits, seems to me clear."

The City of Norwalk, was affirmed in this respect by the Circuit Court of Appeals for the Second Circuit, in 61 Fed., 346, 367, where the case is reported as *The Transfer No. 4, and The Car Float, No. 16.* In the Second Circuit, *International Nav. Co.* v. *Lindstrom,* 123 Fed., 475, and *La Bourgogne,* 39 Fed., 433, 439, are to the same effect. Decisions in admiralty, enforcing death statutes of various states, have been approved also by the Circuit Courts of Appeals, in the Fourth Circuit, *The Glendale,* 81 Fed., 633; in the Fifth Circuit, *Burrell* v. *Fleming,* 109 Fed., 489; *Quinnette* v. *Bisso,* 136 Fed., 825, in the Sixth Circuit, *Robinson* v. *Detroit, &c., Steam Nav. Co.,* 73 Fed., 833; in the Ninth Circuit, *Humboldt Lumber M'f'gs Association* v. *Christopherson,* 73 Fed. 239 per Mr. Justice McKenna; *Alaska Commercial Co.* v. *Williams,* 128 Fed., 362.

The question was not passed on in *The Robert Graham Dunn,* 70 Fed., 270. The Court of Appeals for the First Circuit said in that case at page 272.

"Whether the claims of the deceased seamen are of such a nature as to survive in admiralty, is a question that was not raised at the argument, *and has not been considered by the court.*"

E. *The Objections advanced by the Petitioner's Counsel to the application of the State Statute, providing a remedy for damages caused by death.*

The objection by counsel for the petitioner that to enforce such statutes allowing recovery for death, perhaps slightly different in form in the different States, would impair the uniformity of maritime law, is, it seems to us, conclusively answered by the remarks of Mr. Justice Bradley in the case of *The Lottawanna*, 21 Wall. 558, at page 572:

"Whilst it is true that the great mass of maritime law is the same in all commercial countries, yet, in each country, peculiarities exist either as to some of the rules, or in the mode of enforcing them. Especially is this the case on the outside boundaries of the law, where it comes in contact with, or shades off into the local or municipal law of the particular country and affects only its own merchants or people in their relations to each other. Whereas, in matters affecting the stranger or foreigner, the commonly received law of the whole commercial world is more assiduously observed—as, in justice, it should be. No one doubts that every nation may adopt its own maritime code. France may adopt one; England another; the United States a third, still, the convenience of the commercial world, bound together as it is, by mutual relations of trade and intercourse, demands that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. Hence the adoption by all commercial nations (our own included) of the general maritime law as the basis and ground work of all their maritime regulations. *But no nation regards itself as precluded from making occasional modifications suited to its locality and the genius of its own people and institutions, especially in matters*

that are of merely local and municipal consequence and do not affect other nations. It will be found, therefore, that the maritime codes of France, England, Sweden, and other countries, are not one and the same in every particular; but that whilst there is a general correspondence between them arising from the fact that each adopts the essential principles, and the great mass of the general maritime law, as the basis of its system, *there are varying shades of difference corresponding to the respective territories, climate, and genius of the people of each country respectively.* Each state adopts the maritime law, not as a code having any independent or inherent force, *proprio vigore,* but as its own law, with such modifications and qualifications as it sees fit. Thus adopted and thus qualified in each case, it becomes the maritime law of the particular nation that adopts it. And without such voluntary adoption it would not be law. And thus it happens, that, from the general practice of commercial nations in making the same general law the basis and ground work of their respective maritime systems, the great mass of maritime law which is thus received by these nations in common, comes to be the common maritime law of the world.

"This account of the maritime law, if correct, plainly shows that in particular matters, especially such as approach a merely municipal character, the received maritime law may differ in different countries without affecting the general integrity of the system as a harmonious whole. *The government of one country may be willing to give to its citizens, who supply a ship with provisions at her home port where the owner himself, resides, a lien on the ship;* whilst that of another country may take a contrary view as to the expediency of such a rule. The difference between them in a matter that concerns only their own citizens, in each case, cannot seriously affect the harmony and consistency of the common maritime law which each adopts and observes."

Similarly in *The John G. Stevens*, 120 U. S., 113, at page 126, Mr. Justice Gray said:

The general maritime law is in force in this country or in any other, so far only as administered in its courts, or adopted by its own laws and usages, *The Lottawanna*, 21 Wall., 558, 572; *The Belgenland*, 114 U. S., 355, 369; *Liverpool Steam Co.* v. *Phenix Ins. Co.*, 129 U. S., 397, 444; *Ralli* v. *Troop*, 157 U. S., 386, 407."

In the course of his argument against the enforcement of State Statutes in cases of this kind as causing danger to the uniformity of the admiralty law, the counsel for the petitioner cites *Workman* v. *The Mayor*, 179 U. S. 552, 558, and quotes at length from the opinion with regard to the necessity of maintaining uniform maritime law. But Mr. Justice White, in the opinion in that case, at page 562, said:

"True, *it is well settled* that in certain cases where a lien is given by a state statute, the admiralty courts will enforce rights so conferred when not in absolute conflict with the admiralty law. *The Lottawanna* (1874), 21 Wall. 558. *Moreover, it has been decided that although at the time of the adoption of the Constitution, in courts of admiralty as in courts of common law, a cause of action for a personal injury abated by the death of the injured party, nevertheless, when by a state statute, a right of recovery in such a case was conferred, the admiralty courts would recognize and administer the appropriate relief. The Albert Dumois* 1900, 177 U. S. 257-259, and cases cited. But such cases afford no foundation for the proposition that state laws or decisions can *deprive* an individual of a right of recovery for a maritime wrong which, under the general principles of the admiralty law, he undoubtedly possessed, and can destroy the symmetry and

efficiency of that law by engrafting therein a principle which violates the imperative command of such law that admiralty courts must administer redress for every maritime wrong in every case where they have jurisdictional power over the person by whom the wrong has been committed. The cases in question on the contrary but illustrate the alacrity with which admiralty courts adopt statutes granting the right to relief where otherwise it could not be administered by a maritime court, and they hence do not support the contention that there is a want of power in admiralty courts to give redress in every case within their jurisdiction where the duty to do so is imposed by the maritime law."

The case of *Workman* v. *The Mayor* is merely an illustration of the application to admiralty of the well-known doctrine of the Federal courts that, so far as the *general* principles of law are concerned, they will follow their own principles rather than the decisions of the State courts. Mr. Justice White says later at page 563: "It being then settled that the local decisions of one or more States cannot, as a matter of authority, *abrogate the maritime law*, we are brought to consider whether, under the maritime law, the City of New York was liable for the injury inflicted by the fire-boat."

The result of the decision, is that it may be considered a principle of the Federal admiralty courts that while a State legislature may *create* certain maritime rights which a court of admiralty may enforce, neither the legislature nor the decisions of a State court *can take away* from the admiralty court the right to administer the maritime law as interpreted by it, or in any way limit its jurisdiction.

The case of *Workman* v. *The Mayor*, therefore, does

not in any way militate against the rights contended for here by the claimants.

The law of England is now settled that an action *in personam* for injuries resulting in death on the high seas is maintainable in the court of admiralty. *The Bernina,* 12 Prob. Div., 58, 13 App. Cas., 1, *The Orwell,* 13 P. D., 80. *Davidsson* v. *Hill,* 1901 2 K. B., 606.

The Bernina and *The Orwell,* were both actions *in personam* in the Admiralty Division of the High Court of Justice. It would seem therefore, that the law of England, in regard to the jurisdiction of admiralty in such cases as this, is not as stated in the petitioner's brief at page 11. *The Vera Cruz,* 10 App. Cas., 59, there cited merely decided, as *The Harrisburg* did in this country, that an action *in rem* would not lie for loss of life in admiralty.

The case of *Monaghan* v. *Horn,* 7 Du Val (Supreme Court, Canada), also cited in the petitioner's brief was a proceeding *in rem* in the Maritime Court of Ontario although its name as reported would not indicate the fact. The case is also headed *In re the Garland.* The owners of that vessel had intervened in the proceeding *in rem* to object to the jurisdiction. The case was decided on the narrow question whether a proceeding *in rem* could be maintained in the Maritime Court of Ontario. The court held that that court had the same jurisdiction as the Admiralty Court of England, and as it had been there held, *The Guldfoxe,* 2 Ad. &c., 425, that Lord Campbell's act was not enforceable under proceedings *in rem* in Admiralty, the similar statute of Ontario was not enforceable in the Maritime Court of that province.

The case was decided in June, 1882. *The Bernina* was

decided in 1888. At the present time, therefore, a Canadian court would not consider that the *Monaghan* case stood for the broad principle for which it is cited in behalf of the petitioner.

If, therefore, as the petitioner's counsel contends, "the very absence of precedent . . . . is the *strongest argument* against the existence of such a remedy in Admiralty," the precedents just cited would seem to invalidate what the petitioner claims is the strongest position with regard to the lack of jurisdiction in the Admiralty Court, to allow recovery for loss of life.

The Alaska, 130 U. S., 201, is not against the claimant's position here.

That case was an action *in rem* in Admiralty, to recover for loss of life on a New York pilot boat, occurring in a collision with the steamship *Alaska* on the high seas near the Long Island coast. Recovery was not sought under the New York statute, as is stated in the petitioner's brief.

Counsel for the decedent's representatives in *The Alaska* stated, 130 U. S., p. 207, that his clients were without remedy in the courts of New York. This, it should be mentioned, was not the fact, for the case of *McDonald* v. *Mallory,* 77 N. Y., 546, in the New York Court of Appeals, deciding that the New York statute applied to a New York ship on the high seas had been rendered on September 16, 1879, and the case of *The Alaska* was argued on March 11, 1889, 130 U. S., 201.

The attempt was made in *The Alaska* to distinguish it from *The Harrisburg,* but this Court considered that the cases were not distinguisable and held that *The Alaska* case, like the case of *The Harrisburg,* involved

the question of recovery in the absence of an act of Congress or a State statute. The Court states that it was admitted by the libelants' counsel that the New York statute did not apply. 130 U. S., p. 209.

On page 14 of his brief the petitioner's counsel claims that the states of the Union have "ceded away all such rights to bind its citizens on the high seas." This is not the construction of the constitution, as announced by this Court. *Crapo* v. *Kelly*, 16 Wall., 610; *Manchester* v. *Massachusetts*, 139 U. S., 240. And as has been pointed out above, there are many questions having to do with maritime law as to which state legislatures are competent to act in the absence of acts of Congress. thought the rights created may be enforceable only in an admiralty court.

We venture to say, therefore, that the supposititious statute of Delaware as to death on the high seas imagined by the petitioner's counsel, on page 13 of his brief. would, *in the absence of Congressional legislation* on the subject, be a perfectly constitutional act.

In this connection the analogy sought to be drawn by the petitioner from the Acts of Congress in regard to crime, *Petitioner's Brief*, p. 12, should be noticed. The analogy is not accurate.

Article III, Section 2 of the Constitution says that "The Judicial Power shall extend * * * to all cases of Admiralty and Maritime Jurisdiction."

Congress in §5339 of the Revised Statutes has, in pursuance of this constitutional authority, assumed jurisdiction of all murders "upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay *within the Admiralty and Maritime jurisdiction of*

the *United States.*" The statute might have stopped there, and then it would have had jurisdiction over a crime in the Hudson River, for example; but it did not stop there. The following phrase of limitation was added: "and out of the jurisdiction of any particular state." Thus the states were left to deal with crimes in their territorial waters in places where *torts* would be considered maritime.

The words "out of the jurisdiction of any particular state" were words descriptive of the waters over which Congress was assuming jurisdiction and was not a declaration of the limits of the territorial jurisdiction of the States.

The decision in *St. Clair* v. *The United States,* 154 U. S., 134, cited by the petitioner's Counsel merely dealt with the proper description of the crime, as a crime of which Congress had taken jurisdiction. It did not deal with the territorial jurisdiction of the States. The subject was not argued or involved.

If Congress had not passed such an act, it is submitted, that a state would have been able to do so in respect of vessels owned by its citizens or corporations.

In the present instance Congress has not seen fit to pass any act with regard to death by negligence "within the admiralty and maritime jurisdiction" though undoubtedly competent to do so. Hence so far as death by negligence is concerned the Statutes of each State remain operative within what is in the eyes of the law the territorial or quasi-territorial jurisdiction of each State.

We are brought back therefore to the pivotal question in this case whether a vessel owned by a Delaware Cor-

poration was a vessel of Delaware and hence a part of Delaware in the eyes of the law.

It seems to have been long established that, except our public vessels, we have no vessels of the United States in the eyes of our municipal law. Vessels have been treated almost consistently as belonging to the State of their owner and being "foreign" vessels in other States.

This is evidenced not only by cases like *Crapo* v. *Kelly*, and the other cases cited above, but by a long line of decisions dealing with liens for supplies and repairs. *The Grapeshot*, 9 Wall. 129; *The Kalorama*, 10 Wall. 205, 212; *The Roanoke*, 189 U. S., 185, 193; *The Havana*, 64 Fed. 496; *The Golden Rod*, 151 Fed. 6, 7.

F. *In Limitation Proceedings, Jurisdiction to apply the State Statutes seems to be clear.*

It must be remembered that the present case is a proceeding for limitation of liability, and that the claimants have been enjoined from proceedings in the State court to enforce their claims against the Delaware corporation owning the *Hamilton*.

It is settled by the decisions of this court that in such a proceeding the State statutes giving claims for damages for death can be enforced. *Butler* v. *The Boston S. S. Co.*, 130 U. S. 527; *The Albert Dumois*, 177 U. S. 240, 259.

In the case of *Butler* v. *Boston S. S. Co.*, 130 U. S. 527, it was held that Section 4283 of the Revised Statutes, providing for the limitation of liability of the owners of a vessel, applies to cases of personal injury and death. Mr. Justice Bradley, speaking for the Court, said at page 552:

"We think that the law of limited liability applies to cases of personal injury and death as well as to cases of loss of or injury to property."

As the Circuit Court of Appeals pointed out in this case, it would be the height of injustice to allow a ship owner to force claimants into a jurisdiction where their claims, valid in the common law courts, could not be enforced. Referring to the limitation statute, the Circuit Court of Appeals said at page 258, fol. 422:

"The intent was to limit the liability, not to destroy it."

The court of admiralty in limitation proceedings is a forum of refuge for the ship owner, but it is not a forum of immunity in respect of any class of claims.

If it were impossible to enforce claims for death on the high seas in limitation proceedings, by reason of the fact that the court of admiralty is without jurisdiction to entertain them, a ship owner could not limit his liability in respect of such claims. *Ex parte Phenix Ins. Co.*, 118 U. S. 610, 618, 626.

G. *The universality of the remedy here sought.*

Counsel for the petitioner admits that recovery for loss of life is allowed by code or statute practically throughout the civilized world. *Petitioner's Brief*, pp. 10, 11. And see to the same effect, *Hughes on Admiralty*, §§108-111, pp. 194-199.

Therefore to promote the uniformity of the maritime law on which counsel for the petitioner lays such emphasis, this court should hold that the claimants had a right of action in admiralty for death under the Dela-

ware Statute. The objection that it would cause confusion if it should be so held is not tenable here for *both vessels belong to corporations of Delaware. The Scotland,* 105 U. S. 24, 32.

Ir, however, the *Hamilton* had belonged to Massachusetts, to Spain, or to Great Britain, the claim that to allow recovery to the *Saginaw* would cause confusion is not correct. For under the doctrine contended for by the claimants here, the law applicable is the law of the state or nation where the vessel on or from which the death occurred is owned. If that law gives a right of action for death, such an action should be maintainable in our courts of admiralty. This doctrine has been ably advocated in the numbers of the *Harvard Law Review* for November and December, 1907, by Mr. G. Philip Wardner of the Boston Bar. *Enforcement of a Right of action acquired under Foreign Law for Death upon the High Seas,* XXI Harvard Law Review, 1, 75.

In this article Mr. Wardner takes as his text the decision of the Circuit Court of Appeals for the Seventh Circuit in ***Rundell v. Compagnie Generale Transatlantique,*** 100 Fed., 655, where the court, on exceptions, dismissed a libel for damages for loss of life on the high seas. Mr. Wardner's contention is that the Rundell case was wrongly decided, and, if viewed in the light of the practice of maritime courts in England, and on the continent, is anomalous.

It is submitted, therefore to use Mr. Wardner's words XXI Haw. Law. Rev., p. 90. "That the Admiralty Courts of the United States would, by the establishment of the doctrine here contended for, be brought appreciably nearer to what is now an almost universal rule among civilized communities; namely, that there shall be a right

of action for wrongfully or negligently causing death."

Certainly this is so if, as Mr. Justice White said in *Workman* v. *The Mayor*, 179 U. S. 552, at p. 562, there is an imperative command in the maritime law "that admiralty courts must administer redress for every maritime wrong in every case where they have jurisdiction over the person by whom the wrong has been committed."

In referring to cases of the enforcement of State statutes Mr. Justice White says, on the page just quoted from. "The cases in question * * * illustrate the *alacrity* with which Admiralty Courts adopt Statutes granting the right to relief where otherwise it could not be administered by a maritime court."

The Circuit Court of Appeals was right in allowing the death claims to be maintained and its decision should be affirmed.

SECOND POINT.

THE CIRCUIT COURT OF APPEALS, WAS RIGHT IN HOLDING THAT THE REPRESENTATIVES OF THE MEMBERS OF THE CREW OF THE "SAGINAW," WHO WERE DROWNED, WERE ENTITLED TO RECOVER THEIR FULL DAMAGES FROM THE "HAMILTON."

It is objected by the petitioner that Mr. Goslee should not recover anything because it is claimed that he was guilty of contributory negligence resulting in the collision.

The Commissioner who assessed the damages, the District Court and the Circuit Court of Ap-

peals, have successively found against this contention, *Record,* pp. 221, 232, 258, and there is no reason why this court should vary these concurrent findings, for they are amply sustained by the evidence.

The burden of proof necessary to sustain an allegation of this kind rests with the petitioner in this case. *Watkins* v. *The Southern Pacific Railroad,* 38 Fed., 711; *Berrie* v. *N. Y. L. E. & W. R. R.,* 70 Fed., 193. It has failed to sustain this burden.

The petitioner has in fact offered no proof on the subject except that which is to be found in Captain Tunnell's testimony. The claimants representing Mr. Goslee were not parties to the cause when Captain Tunnell was first examined in July, 1903, but his evidence as developed by the counsel then engaged, showed clearly that he, and not Goslee was in actual charge of the navigation of the *Saginaw* at the time of the collision. *Record,* pp. 59, 62.

Captain Tunnell, was re-examined on this particular question by counsel for these claimants, on November 1st, 1904, in the presence of the District Judge, p. 100, and there stated in unqualified terms that he was in charge of the navigation himself at the time of the collision, and that it would not have been in accordance with usage for Goslee, who was also in the pilothouse with him, to have made any change in the speed, or to have stopped the ship without an order from him. Capt. Tunnell frankly assumed the entire responsibility for all the maneuvers leading up to the collision. *Record,* pp. 100-103.

The speed of the *Saginaw* early in the night even if excessive, did not contribute to the collision and is a fault too remote to be considered in this connection.

The negligence of the master of the *Saginaw* is not imputable to the other members of the crew.

It is argued by the petitioner in the second point of its brief that even if Goslee was not personally negligent, the negligence of Captain Tunnell in the navigation of the *Saginaw* which led to her being held jointly in fault with the *Hamilton,* was the negligence of a fellow servant of the members of the crew who were lost, and, as a consequence, there could have been no recovery against the *Saginaw* had there been any proceeds left after her loss. As a consequence of this, it is claimed that the recovery against the *Hamilton* must be limited to one-half of the damages as found.

It is claimed that the case of *The Osceola,* 189 U. S., 158, is authority for the proposition that in a case of this kind no recovery could be had against the *Saginaw.* It would seem, however, that this is not so, because the question whether or not the master of the vessel is a fellow servant of the crew was expressly reserved by the court in that decision. Furthermore that case deals with the relations between a crew and its own ship only. *Opinion of Court of Appeals. Record,* p. 258.

It is well settled that the negligence of Captain Tunnell is not imputable to the other members of the *Saginaw's* crew either under the decisions of Delaware or in the Federal Courts. *Little v. Hackett,* 106 U. S., 366; *Farley* v. *Wilmington & N. Elec. Ry. Co.,* 52 Atl., 543; see also *The Bernina,* 12 Prob. Div., 58; 13 App. Cas., 1.

Where an action is brought by a servant against a person other than his master, the fact that the fellow-servant of the plaintiff may have been negligent and that such negligence may have contributed to the accident is

not a defense to the third person against whom suit is brought. The case against him stands or falls on the finding as to his own negligence. He is liable for an injury caused by the concurring negligence of himself and another to the same extent as for one caused entirely by his own negligence. *Ry. Co.* v. *Cummings*, 106 U. S., 700, 702. *Chicago, etc. Ry. Co.* v. *Chambers*, 68 Fed., 148, 153, and cases there cited.

The petitioner's counsel contends that in some way not wholly divulged, the crew of the *Saginaw* were so identified with her that her negligence was their negligence, even if they were personally innocent of fault, and that the rule with regard to the crew is different from that applicable to passengers in this regard. *Petitioner's Brief*, pp. 26, 27.

In the case of *The Bernina*, 12 Prob. Div., 58, 13 App. Cases 1, as here, both vessels were held in fault for the collision, yet the House of Lords decided this very question adversely to the petitioner's contention and held that the doctrine of imputed negligence did not apply to either of the two claims before them, one for the death of a member of the crew and one for the death of a passenger. The two kinds of claim are, therefore, on the same footing and their successful maintenance, depends entirely on the question of personal freedom from contributory negligence.

There has been no negligence shown on the part of the members of the *Saginaw's* crew, who are here represented. *Opinion of Court of Appeals, Record*, p. 258.

It was proper therefore to allow recovery of the full amount of their claims against the Old Dominion Steamship Company as owner of the *Hamilton*.

The contention of the petitioner that in the case of a

collision between two vessels, where both are held to blame, an innocent third party, if his claim against one of the vessels is barred by a rule of law such as the doctrine of fellow service, or by some statute, can recover only one-half of his damages against the surviving vessel, is not supported by the authorities. The mere statement of such a contention makes the injustice of it plain.

It has been repeatedly held by this Court that innocent parties suffering damage in a collision may recover all their damages from either vessel, and that the question of contribution comes up merely as between the two vessels.

In *The Atlas*, 93 U. S., 302, in discussing the rights of innocent parties who may have suffered by a collision for which two or more vessels are to blame, this Court said, at page 317:

'The owners of the cargo may sue the owners of one of the ships, or both, and they may sue at law or go into admiralty, at their election, and, having proved their case, they are as much entitled to compensation in the admiralty as they would have been if they had elected to pursue their common law remedy.'

This doctrine was applied to suits for death of passengers and apparently to suits for loss of the effects of the crew of one of the colliding vessels in *The Albert Dumois*, 177 U. S., 240, 243, 260.

See also *The Juniata*, 93 U. S., 337; *The North Star*, 106 U. S., 17, 22; *The Chattahoochee*, 173 U. S., 540, 549; *The New York*, 175 U. S., 187; *Ex parte Union Steamboat Co.*, 178 U. S., 317; *The Conemaugh*, 189 U. S., 363.

Under these authorities it is clear that the Court of Appeals was right in affirming the decree of the District Court, holding that the recovery of full damages in each claim was allowable against the Old Dominion Steamship Company.

LAST POINT.

THE DECREE BELOW SHOULD BE AFFIRMED WITH INTEREST AND COSTS.

New York, December 6, 1937.

Respectfully submitted,

J. Parker Kirlin,
John M. Woolsey,
Howard M. Long,
Of Counsel.

THE HAMILTON.[1]

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 71. Argued October 24, 1907.—Decided December 23, 1907.

Until Congress acts on the subject, a State may legislate in regard to the duties and liabilities of its citizens and corporations while on the high seas and not within the territory of any other sovereign.

Where a fund is being distributed in a proceeding to limit the liability of the owners of a vessel, all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not.

The statute of Delaware giving damages for death caused by tort is a valid exercise of the legislative power of the State, and extends to the case of a citizen of that State wrongfully killed while on the high seas in a vessel

[1] Docket title, Old Dominion Steamship Company, owner of the Steamship Hamilton, *v.* Gilmore.

belonging to a Delaware corporation by the negligence of another vessel also belonging to a Delaware corporation. A claim against the owner of one of the vessels in fault can be enforced in a proceeding in admiralty brought by such owner to limit its liability.

When both vessels in collision are in fault the representatives of a seaman on one of the vessels, killed without contributory negligence on his part, may, in a proceeding to limit liability, where an action is given by the state statute against the owner of the other vessel, recover full damages, and are not limited to damages recoverable under the maritime law against the seaman's own vessel for death or injury caused by negligence of the master thereof or his fellow servants thereon. Neither the seaman's contract with the owners of the vessel he is on, nor the negligence of his own vessel, nor any provision of the Harter Act affects the claim against the other vessel.

146 Fed. Rep. 724, affirmed.

THE facts are stated in the opinion.

Mr. Harrington Putnam, with whom *Mr. Henry E. Mattison* was on the brief, for petitioner:

The Delaware statute does not apply to a claim for death on the high seas arising from tort, in proceedings in admiralty.

In the relation which springs out of tort, there is no basis for saying that the parties have impliedly consented to be bound by the law of any particular State. As a consequence their rights and liabilities are to be determined by the general principles of maritime law as administered in our admiralty courts. If the Hamilton had belonged in one State, the Saginaw in another and the deceased in still another State, the law of any particular State could not more than another have precedence and a controlling influence. On the contrary, there is no presumption that the relations of the parties are to be fixed by the laws of any one State when an injury accrues on the high seas through a pure marine tort. *Rundell* v. *Compagnie Générale*, 94 Fed. Rep. 366; aff'd 100 Fed. Rep. 655.

The origin of the fiction that a merchant ship may be regarded as a floating portion of a country, or, as the doctrine is sometimes expressed, that it is a continuation or prolongation of the National territory, is as recent as 1752. Modern writers treat this fiction as having only a limited application. Hall on International Law, Oxford, 1904, pp. 249, 250.

The doctrine of "territoriality" is rather a limit on rights of search and protection against aggression than one that confers new rights of action for tort. Walker, Science of International Law, pp. 130, 131.

Independent of precedent, it is plain that the liability for wrongs, and especially for causing death, is to be determined in admiralty by the court administering the law of the forum. No State can extend its laws over the ocean. The Federal laws alone, and the maritime jurisprudence administered by the Federal courts must decide the liability for wrongs committed outside of territorial waters.

The doctrine that merchant ships are part of the territory, if applicable to collisions, would also govern salvage on the high seas. Such attempts to impose foreign laws have often been made, but have never been successful in the United States courts. *The Edam*, 13 Fed. Rep. 135, 139.

The territorial fiction depends on contracts, because publicists recognize that it is only when the crew are on board that the doctrine of territoriality applies. Once the contracting members of the ship's company leave the vessel the fiction vanishes. Woolsey, International Law (6th ed.), p. 72.

Statutes providing for the survivorship of rights of action, and recovery in case of loss of life, have been enacted in varying forms, not only by the States of the Union, but also by foreign countries, with which the United States has intimate relations—especially by England and the Canadian provinces. The system of law on the continent of Europe in some form also gives a recovery for loss of life. Yet in no case have the courts of Great Britain or the United States regarded the law of the flag upon the high seas as authorizing such a recovery in the admiralty courts. Even in Canada the admiralty has no jurisdiction for loss of life. *Monaghan* v. *Horn*, 7 Du Val (Supreme Court, Canada), 409.

The same rule was reached in England (notwithstanding Lord Campbell's Act) that admiralty has no jurisdiction for loss of life. *The Vera Cruz*, 10 App. Cas. 59 (1884).

Cases of tort arising upon the high seas, in the admiralty courts of the United States, will be governed by the law of the forum, which is the general maritime law as administered in these courts. *The Scotland*, 105 U. S. 24; *The Belgenland*, 114 U. S. 355; *The Brantford City*, 29 Fed. Rep. 373.

Next to the natural justice of its principles, the highest value of maritime law consists in its uniformity and general acceptance. We are not dealing with municipal law nor with general commercial law not maritime, both of which are prescribed and administered concurrently by the state and Federal legislatures and courts, but we have to deal with that which relates exclusively to the maritime law and the admiralty jurisdiction. That law is not subject to the change or modification of state legislatures.

Indeed, one of the controlling reasons for conferring on the general government the exclusive jurisdiction of all admiralty and maritime causes was to secure the great benefits which must inevitably result from uniformity in the maritime law.

A State cannot, therefore, destroy the symmetry of that law by creating maritime rights or conferring jurisdiction in any particular upon an admiralty court. *The Manhasset*, 18 Fed. Rep. 918, 923; *Welsh* v. *The North Cambria*, 40 Fed. Rep. 655, 656; *The Lyndhurst*, 48 Fed. Rep. 839, 841; *Workman* v. *The Mayor &c.*, 179 U. S. 552, 558.

The surviving members of the crew of the Saginaw cannot maintain their claim for its full face, but the Hamilton remains answerable for only half of all such losses. *The Osceola*, 189 U. S. 158, 175; *The City of New York*, 25 Fed. Rep. 151; *The Queen*, 40 Fed. Rep. 694; *Stahl* v. *The Niagara*, 77 Fed. Rep. 329, 336.

Mr. J. Parker Kirlin and *Mr. George Whitefield Betts*, with whom *Mr. John M. Woolsey* and *Mr. Howard M. Long* were on the brief, for respondents:

Since Congress has not legislated with reference to the subject, the statute of the State of Delaware, as a sovereign State,

allowing damages for death is binding and effective on its vessels when on the high seas. *The Lottowanna*, 21 Wall. 558, 580; *The Glide*, 167 U. S. 606; *Ex parte McNiel*, 13 Wall. 236; *Cooley* v. *Board of Wardens*, 12 How. 299; *Steamboat Co.* v. *Chase*, 16 Wall. 522; *Sherlock* v. *Alling*, 93 U. S. 99.

The Hamilton and Saginaw, for the purposes of this proceeding, were parts of the territory of the State of Delaware, and subject to its laws. *Wilson* v. *McNamee*, 102 U. S. 572; *Crapo* v. *Kelly*, 16 Wall. 610; *The Lamington*, 87 Fed. Rep. 752.

There has been no negligence shown on the part of the members of the crew of the Saginaw. It was proper, therefore, to allow the full amount of their claims. *The Atlas*, 93 U. S. 302; *The Albert Dumois*, 177 U. S. 240, 243, 260. See also *The Juniata*, 93 U. S. 337; *The North Star*, 106 U. S. 17, 22; *The Chattahoochee*, 173 U. S. 540, 549; *The New York*, 175 U. S. 187; *Ex parte Union Steamboat Co.*, 178 U. S. 317; *The Conemaugh*, 189 U. S. 363.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a proceeding for the limitation of liability of the steamship Hamilton in respect of a collision on the high seas with the steamship Saginaw, in which the Saginaw was sunk and her chief mate and some of her crew and passengers were drowned. It is found, and not disputed, that both vessels were to blame. Both vessels belonged to corporations of the State of Delaware. A statute of that State, after enacting that actions for injuries to the person shall not abate by reason of the plaintiff's death, provides that "whenever death shall be occasioned by unlawful violence or negligence, and no suit be brought by the party injured to recover damages during his or her life, the widow or widower of any such deceased person, or if there be no widow or widower, the personal representatives may maintain an action for and recover damages for the death and loss thus occasioned." Act of January 26, 1866, chap. 31, p. 28, vol. 13, Part 1, Delaware Laws, as amended

by act of March 9, 1901, chap. 210, p. 500, vol. 22, Delaware Laws. On the strength of this statute the representatives of a passenger and of three of the crew filed claims, and the claims were allowed by the District Court (see 134 Fed. Rep. 95; 139 Fed. Rep. 906), and afterwards by the Circuit Court of Appeals; 146 Fed. Rep. 724; 77 C. C. A. 150. A certiorari was granted by this court to settle the question, as stated by the petitioner, whether the Delaware statute applies to a claim for death on the high seas, arising purely from tort, in proceedings in admiralty. Incidentally the right of representatives of the crew of the Saginaw to recover their claims in full against the Hamilton also has been discussed.

Apart from the subordination of the State of Delaware to the Constitution of the United States there is no doubt that it would have had power to make its statute applicable to this case. When so applied, the statute governs the reciprocal liabilities of two corporations, existing only by virtue of the laws of Delaware, and permanently within its jurisdiction, for the consequences of conduct set in motion by them there, operating outside the territory of the State, it is true, but within no other territorial jurisdiction. If confined to corporations, the State would have power to enforce its law to the extent of their property in every case. But the same authority would exist as to citizens domiciled within the State, even when personally on the high seas, and not only could be enforced by the State in case of their return, which their domicil by its very meaning promised, but in proper cases would be recognized in other jurisdictions by the courts of other States. In short, the bare fact of the parties being outside the territory in a place belonging to no other sovereign would not limit the authority of the State, as accepted by civilized theory. No one doubts the power of England or France to govern their own ships upon the high seas.

The first question, then, is narrowed to whether there is anything in the structure of the National Government and under the Constitution of the United States that takes away

or qualifies the authority that otherwise Delaware would possess—a question that seems to have been considered doubtful in *Butler* v. *Boston & Savannah Steamship Co.*, 130 U. S. 527, 558. It has two branches: First, whether the state law is valid for any purpose, and, next, whether, if valid, it will be applied in the admiralty. We will take them up in order.

The power of Congress to legislate upon the subject has been derived both from the power to regulate commerce and from the clause in the Constitution extending the judicial power to "all cases of admiralty and maritime jurisdiction." Art. 3, § 2; 130 U. S. 557. The doubt in this case arises as to the power of the States where Congress has remained silent.

That doubt, however, cannot be serious. The grant of admiralty jurisdiction, followed and construed by the Judiciary Act of 1789, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it," Rev. Stats. § 563, cl. 8, leaves open the common law jurisdiction of the state courts over torts committed at sea. This, we believe, always has been admitted. *Martin* v. *Hunter*, 1 Wheat. 304, 337; *The Hine* v. *Trevor*, 4 Wall. 555, 571; *Leon* v. *Galceran*, 11 Wall. 185; *Manchester* v. *Massachusetts*, 139 U. S. 240, 262. And as the state courts in their decisions would follow their own notions about the law and might change them from time to time, it would be strange if the State might not make changes by its other mouthpiece, the legislature. The same argument that deduces the legislative power of Congress from the jurisdiction of the National courts, tends to establish the legislative power of the State where Congress has not acted. Accordingly, it has been held that a statute giving damages for death caused by a tort might be enforced in a state court, although the tort was committed at sea. *American Steamboat Co.* v. *Chase*, 16 Wall. 522. So far as the objection to the state law is founded on the admiralty clause in the Constitution, it would seem not to matter whether the accident happened near shore or in mid-ocean, notwithstanding some expressions of doubt. The same conclusion was reached in *Mc-*

Donald v. *Mallory*, 77 N. Y. 546, where the death occurred on the high seas. *Sherlock* v. *Alling*, 93 U. S. 99, reinforces *Chase's case*, and answers any argument based on the power of Congress over commerce, as to which we hardly need refer also to *Cooley* v. *Board of Wardens*, 12 How. 299, *Ex parte McNiel*, 13 Wall. 236; *Wilson* v. *McNamee*, 102 U. S. 572, and *Homer Ramsdell Transportation Co.* v. *La Compagnie Générale Transatlantique*, 182 U. S. 406, concerning state pilotage laws.

The jurisdiction commonly expressed in the formula that a vessel at sea is regarded as part of the territory of the State, was held, upon much consideration, to belong to Massachusetts, so far as to give preference to a judicial assignment in insolvency of such a vessel over an attachment levied immediately upon her arrival at New York, in *Crapo* v. *Kelly*, 16 Wall. 610. That decision was regarded as necessitating the conclusion reached in *McDonald* v. *Mallory*, *supra*. Other instances of state regulation are mentioned in *The City of Norwalk*, 55 Fed. Rep. 98, 106; but without further recapitulation of the authorities, we are of opinion that the statute is valid. See *Workman* v. *New York*, 179 U. S. 552, 563. We should add, what has been assumed thus far, as it had to be assumed in order to raise the question discussed, that we construe the statute as intended to govern all cases which it is competent to govern, or at least not to be confined to deaths occasioned on land. *McDonald* v. *Mallory*, 77 N. Y. 546. If it touches any case at sea, it controls this. See *The Belgenland*, 114 U. S. 355, 370. Whether it is to be taken to offer a similar liability of Delaware owners to foreign subjects, *Mulhall* v. *Fallon*, 176 Massachusetts, 266, need not be determined now.

We pass to the other branch of the first question: whether the state law, being valid, will be applied in the admiralty. Being valid, it created an *obligatio*, a personal liability of the owner of the Hamilton to the claimants. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 126. This, of course, the admiralty would not disregard, but would respect the right when brought before it in any legitimate way. *Ex parte Mc-*

Niel, 13 Wall. 236, 243. It might not give a proceeding *in rem*, since the statute does not purport to create a lien. It might give a proceeding *in personam*. *The Corsair*, 145 U. S. 335, 347. If it gave the latter, the result would not be, as suggested, to create different laws for different districts. The liability would be recognized in all. Nor would there be produced any lamentable lack of uniformity. Courts constantly enforce rights arising from and depending upon other laws than those governing the local transactions of the jurisdiction in which they sit. But we are not concerned with these considerations. In this case the statutes of the United States have enabled the owner to transfer its liability to a fund and to the exclusive jurisdiction of the admiralty, and it has done so. That fund is being distributed. In such circumstances all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not. This is not only a general principle, *Andrews* v. *Wall*, 3 How. 568, 573; *The J. E. Rumbell*, 148 U. S. 1, 15; Admiralty Rule, 43; *Cargo Ex Galam*, 2 Moore P. C. (N. S.) 216, 236, but is the result of the statute, which provides for, as well as limits the liability, and allows it to be proved against the fund. *The Albert Dumois*, 177 U. S. 240, 260. See *Workman* v. *New York*, 179 U. S. 552, 563.

The second question concerns the right of the representatives of the crew to recover their claims in full. There is a faint suggestion that the mate of the Saginaw was negligent, but on this point we shall not go behind the findings below. The main objection is that the statute allows a recovery beyond the maintenance and support which were declared in *The Osceola*, 189 U. S. 158, 175, to be the limit of a seaman's rights against his own vessel when injured by the negligence of the master or a fellow-servant on his ship. But the question here regards the liability of the Hamilton, another vessel. The contract between the seaman and the owners of the Saginaw does not affect the case. *Erie R. R. Co.* v. *Erie Transportation Co.*, 204 U. S. 220, 226. Neither does the Harter Act, even if its terms could be extended to personal injuries and loss of life. *The Chatta-*

hoochee, 173 U. S. 540. Neither does the negligence of the Saginaw. *The Atlas*, 93 U. S. 302.

We are of opinion that all the claimants are entitled to the full benefits of a statute "granting the right to relief where otherwise it could not be administered by a maritime court." *Workman* v. *New York*, 179 U. S. 552, 563.

Decree affirmed.